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DISTRICT COURT OF THE UNITED STATES,

Northern District of California.

O P I N I O N

DELIVERED BY HIS HONOR

OGDEN HOFFMAN, DISTRICT JUDGE,

IN THE CASE OF

JUAN M. LUCO, ET AL.

N O . 4 2 8 ,

CLAIMING THE

“ULPINAS RANCHO.”

P. DELLA TORRE, Esq., United States Attorney.

CALHOUN BENHAM, Esq., for Claimants.

SAN FRANCISCO :

1858.

Whitton, Towne & Co's Print, 125 Clay Street.

District Court of the United States,

NORTHERN DISTRICT OF CALIFORNIA.

OPINION,

DELIVERED BY HIS HONOR, OGDEN HOFFMAN,
DISTRICT JUDGE.

JUAN M. LUCO ET AL.,

ADS.

THE UNITED STATES.

} No. 428.

The claim in this case is for a tract of land of from thirty to fifty square leagues in extent, constituting a sobrante, or surplus, between various ranchos mentioned in the title. It was rejected by the Board as spurious. The testimony is very voluminous. I have considered it with the attention due to its importance.

The claimants have offered in evidence a paper purporting to be the original petition of José de la Rosa, to the Governor, dated Oct. 18, 1855, with a marginal decree of the latter, dated Nov. 8, 1845. Also, the original grant,

signed by Pio Pico, José Ma. Covarrubias, Sec'y, dated Dec. 4th, 1845, with a certificate of approval by the Assembly, signed by the same persons, and dated December 18th, 1845.

These papers are not produced from the archives of the former government, but were deposited in the Surveyor General's office on the 25th October, 1853, by the claimants.

No claim was presented to the Board within the time limited by the act of 1851. An application was therefore made to Congress, and a special act was passed July 17, 1854, authorizing the presentation of the claim. This application was based upon the affidavits of Pio Pico and José Maria Covarrubias, which will hereafter be noticed.

It is contended, on the part of the United States, that all the papers in the case are spurious, and were fabricated long after the conquest of the country.

In deciding upon the genuineness of any title alleged to have been derived from the former government, the most satisfactory evidence which can be offered to the Court is that derived from the archives, and that afforded by a notorious occupation, and a claim of ownership recognized and acquiesced in, if not by the public authorities, at least by the neighbors and adjoining proprietors of the alleged grantee.

In the case at bar the archives show no trace whatever of the existence of the grant. The petition and marginal decree are presented by the claimants from their own custody. No proofs are offered to explain why the claim was not sooner presented to the Board, nor where or in whose custody the documents have been since their alleged delivery to the grantee. The affidavits on which the application to Congress was founded, were made in May and June, 1853. It is clear that neither to Pico or Covarrubias was the original petition presented. In his deposition, taken before the Board, Covarrubias states that all the documents presented to him, when he made his affidavit, are, he believes, referred to in the affidavit; and that as well as he can recollect, all the documents about which he

was then testifying were presented to him. He is not very positive, however. He remembers that the expediente was shown him.

Had the witness before testifying adverted to the affidavit itself, he would have seen that he therein swears that, "he (De la Rosa) presented a written petition for said grant of land, but the affiant does *not know where said petition now is*. The practice with the office was to return the petition with the grant."

It will hardly be contended that the petition was before Covarrubias when he made this affidavit.

The affidavit of Pico refers exclusively to the "original document hereunto annexed, bearing date Dec. 4, 1845,"—which was the grant.

Mr. Haight, who was consulted by the claimants as counsel, testifies that he saw, in 1853, the original document, *i. e.*, the grant, but is not positive as to the others, and that "the claimants represented to him that there were other papers in Mexico, which they would endeavor to get."

It is evident, therefore, that so late as the beginning of 1853 the petition had not been brought to light.

It is also obvious, from the tenor of the affidavits of Pico and Covarrubias, that the certificate of approval by the Assembly was not exhibited to them when their affidavits were taken. The affidavit of Covarrubias refers exclusively to the grant. Neither Mr. Haight nor Mr. Hawes pretend to have seen the certificate. It is produced for the first time in October, 1853, when it was deposited in the Surveyor General's office.

No explanation whatever of these circumstances is offered by the claimants, nor has any attempt been made to show how it happened that the petition and certificate became separated from the grant; how they, or at least the former, found its way to Mexico; in whose custody they were found, and when, and from whom, and under what circumstances the person in possession of them procured them.

M. G. Vallejo, one of the principal witnessess relied on by the claimants, testifies that in the month of December,

1845, he received from the Governor, by a courier, the grant, which he delivered to Rosa. It was in an envelope which the latter opened, and the witness saw and read it.

In reply to the 6th cross interrogatory, he states that the grant was the only paper received by him, and that he did not see the others. He also states that he never saw the certificate of approval until he saw it in the Surveyor General's office; that he saw the petition when Rosa drew it, but that he does not know that Rosa had the petition after he received the grant.

To the twenty-second cross interrogatory, he replies that he never saw the petition and approval attached together until he saw them in the Surveyor General's office.

Jose de la Rosa, the grantee, testifies that he drew the petition in 1845, and that in the latter part of that year, he received it back again *with the title*. That the title was delivered to him by M. G. Vallejo in December, 1845, and that the certificate of approval was delivered to *him by Vallejo subsequently, in the year 1846*—in January or February of that year.

The credibility of the testimony of either of these witnesses will be considered hereafter. It is sufficient at present to say that neither pretends to account for the papers after their alleged reception by Rosa in 1845 and 1846. No inquiry was made of the latter as to whether he retained them in his custody; why he did not while the property remained his, *i. e.*, up to March, 18th, 1853, present his claim to the Board; whether at the time of the transfer he delivered the papers to the present claimants, or if not—whether as stated by them to their counsel, Mr. Haight, about the same time—they were then in Mexico, and if so in whose custody, and for what reason sent?

In a case where the chief inquiry is whether the papers be genuine, information on these points ought not to be withheld.

We have seen that Jose Maria Covarrubias, in his affidavit in 1853, states it to have been "the practice with the office to return the petition with the grant."

This extraordinary statement is not only disproved by

the notorious fact that the espedientes containing the petition, *informes*, orders, and concession were usually retained in the archives where they are now found ; the grant or *titulo* being the only document delivered to the party ; but it is contradicted by the evidence of M. G. Vallejo, and by the testimony of Covarrubias himself. In his answer to the sixty-second cross interrogatory, he says : “ The petitions and the balance of the espedientes were archived in the archives of the government. *This was the general practice before, while, and after I was Secretary.*”

It is to be regretted that the sense of the necessity of accounting for the absence of the petition from the archives, which may have suggested the statement of Covarrubias in his affidavit, did not lead the claimants then or since to offer a more satisfactory explanation of the circumstance.

The claimants can thus derive no aid to their documents from any presumptions of genuineness which might have arisen from their production from the proper custody. On the contrary, they are liable to the suspicions which their long delay in presenting them, and their entire failure to explain circumstances so clearly requiring and so easily admitting of explanation (if the papers are genuine,) naturally excite.

Evidence has been offered to show an occupation by Rosa of the land said to have been granted to him.

The witnesses on this point are Alvarado, Victor Prudon, Mesa, Salvador, Valléjo, Carillo, Juarez and Ortega.

Alvarado swears that in 1849 Rosa told him in San Francisco that he was occupying a rancho near Sonoma.

Victor Prudon testifies that in 1840 he knew Rosa to be in the occupation of a rancho called Julpinas ; that he had a house and corral on it, and that he remained there until 1846. The witness on his cross examination admits that he never was on the rancho ; that he knew of Rosa's occupation “ from Gen. Vallejo and common report,” and from his sending goods to the place by Rosa's order, or that of his mayordomo.

Mesa testifies that he knew Rosa to be living on and

occupying a rancho in Solano county, long before the Americans came to the country; that he had an *adobe* house on the place in which he lived with his family; he had a corral and horses, and some cultivation; that he visited Rosa at his house while he lived there; that he saw Rosa building the house, and that the cultivation was about one hundred varas square.

Salvador Vallejo swears that he knows Rosa has occupied the place ever since he obtained the grant, *i. e.*, in 1845 or 1846; that he had a house and corral, horses and cattle there, and a portion of the land enclosed and cultivated; that Rosa lived there with his family, but at times during the period he has resided at Napa, Sonoma and Monterey.

On cross examination, he states that he knows Rosa has continued to occupy the land, for it is on the road to Sacramento, and he, the witness, has frequently seen it in passing that way.

José Ramon Carillo testifies that he has frequently stopped at Rosa's house on the rancho of Ulpinas; that Rosa was living there with his family; that he had horses and cattle on it, and had erected a corral. The house was an adobe; that Rosa was still on the place when he, witness, left Sonoma two or three years after the Bear Flag war; *i. e.*, 1848 or 1849.

Cayetano Juarez testifies that he was in Rosa's house on the rancho in 1845; that it was built of poles, covered with board and tules; that it was near an estuary of the river; that it could not possibly have been seen from the road to Sacramento, it being eight or ten leagues distant; that there were eight or ten acres cultivated in wheat; that the house was situated about eight leagues from the road running from Sonoma to Sacramento; that on one occasion he lent him horses and carts to take his family to the rancho; that he had lent him horses on several occasions; that the cultivated land was not fenced, but appeared to have been ploughed.

Ortega swears that in 1838, he saw on the land a house built of poles and plastered with mud; that it was situa-

ted on the right hand side of the road as you go from Sonoma to Sacramento, about seventy varas from the estero ; that he stopped there on his way to Sacramento, and that he saw the house from the travelled path before he turned off to go to it ; there was no wagon road to it, but numerous paths made by cattle and elk.

José de la Rosa, the grantee, testifies that he occupied the land ; that he kept his wild horses upon it during the year 1846 ; that they were three or four hundred in number, and marked with his brand, of which he gives a rough drawing. The tame horses, about fifty in number, he kept at Sonoma ; that in 1845 and 1846, he frequently visited his ranch with his family ; but " he always went with his own horses ; he never had horses belonging to any one else."

Salvador Vallejo testifies in a second deposition, that he conveyed De la Rosa in his launch the first time he went to occupy Ulpinas ; that a house was built under his and witness' directions, and was built of poles and mud, and roofed with boards ; that a piece of land was enclosed and cultivated there, and that the cattle on the rancho were owned by Rosa, but branded with the mark of M. G. Vallejo.

M. G. Vallejo states, in a general way, that he knows that De la Rosa occupied the rancho. He admits, however, that he never was on it after Rosa received his grant.

The foregoing comprises all the testimony adduced by the claimants to prove occupation by De la Rosa of the land.

It is apparent that the witnesses contradict each other on several material points. As to the extent of the cultivation, as to whether or not it was fenced, as to the material of which the house was composed, as to the brand upon the cattle, and especially as to the situation of the house, whether it was near to and visible from the road, or eight or ten leagues distant. The statement of one of the witnesses that he frequently lent horses and carts to De la Rosa, is inconsistent with the declaration of the latter that he always used his own horses in going to his

rancho, while the frequent voyages in the launch, as described by Vallejo, seem wholly to have escaped the recollection of De la Rosa.

It unnecessary, however, to dwell on these contradictions, for the alleged occupation by Rosa of the land, has been disproved by what I cannot but consider a clear preponderance of testimony.

It is in evidence that up to 1853, the lands were treated by the U. S. as public lands, and surveyed as such—Felipe Peña, one of the original grantees of the adjoining rancho of Putos, of Baca, and Amijo, states that Rosa never built a house upon or occupied the rancho; that he is acquainted with the rancheros in that region, and never knew Rosa to be the proprietor or owner of any land.

Demetrio Peña makes the same statement.

John Bidwell, the original grantee of "Elichama," and who was acquainted with all the rancheros in that part of the country, states that the premises claimed in this case were never occupied or cultivated by any one to his knowledge, and that had De la Rosa lived on the rancho he thinks he should have known it.

José Berreyesa, who was Alcalde of Sonoma in 1846, states that he was asked by Don Augustin Bernal if he would report favorably to his (Bernal's) petition for the land, whether it was vacant and could be granted; to which he replied that it was vacant and unoccupied, and that so far as he (Berreyesa) was concerned, there would be no obstacle to the grant.

S. Cooper testifies that he was acquainted with all the rancheros in the neighborhood in 1846, and ever since; that he never heard of Rosa's having a grant; that there was no adobe house upon it. That he was assessor during the first two years California was a State; that all the ranchos were given in to be assessed except one—but this rancho was not given in by any one, and was not taxed.

William Denton testifies that in 1852 and 1853, as County Surveyor, he inquired of all the old rancheros in the neighborhood, and that from the information so obtained, he certified this land to be public land. That he

has been conversant with the whole tract of country since 1852, and never saw any evidence of any old Spanish improvements on this land, or heard of any.

E. F. Elliott testifies, that in the spring of 1846, Rosa moved into the same house with himself, and purported to be a school teacher, that he had no property, and since the war he has followed the business of a tailor, and sometimes worked in Gen. Vallejo's vineyard. The witness further states that he was personally acquainted with the whole neighborhood, and worked in every *rodeo*, that his business was killing cattle for their tallow and hides, and that Rosa did not have, during the years 1846, 1847, 1848 and 1849, cattle to the number of from 300 to 500, the same number of horses, or any less number, nor could he have had them without the witness' knowledge. That he never saw the brand delineated by Rosa on any cattle, that he would have seen it had it been there.

The witness gives from memory some 16 brands which were upon cattle in the neighborhood. He further states that he has heard Rosa frequently complain of his poverty, but never heard him speak of having any property.

Elmsley Elliott swears to nearly the same facts. He states that Rosa's family has often come to his father's house begging for something to eat, that he has travelled all over the country, and has never heard of Rosa's owning the stock described by him, that Rosa has told him more than twenty times, from 1845 to 1849, that he did not own any such.

John Cameron, a witness for the claimants, who has resided in Sonora from April, '47, until March, 1854, stated that he never knew Rosa to be the owner of any number of horses and cattle. That he was acquainted with all the brands used from Sutter's to San Rafael, and he never had any pointed out to him as Rosa's brand, that he was generally supposed to be a very poor man.

It is unnecessary to recapitulate all the evidence on this point. A careful perusal of it has led me irresistably to the conclusion, that it is not proved that Rosa either occupied, built upon, or cultivated this rancho. From the

whole testimony in the case, as well on the part of the claimants as of the United States, it clearly appears that up to the latter part of 1844, Rosa's residence was in Monterey, where he was employed as printer. That in 1844 or the beginning of 1845, he came to Sonoma, where he resided with his family until after the conquest, that he was poor, and obtained his livelihood by mending clothes and watches, and similar occupations.

From 1846 to 1848, it is stated by one of the claimant's own witnesses, (J. P. Leese,) that he lived with Gen. Vallejo, to whose children he taught music, and that Gen. Vallejo, from charitable motives, gave him an opportunity to support himself.

Since the organization of the Board of Commissioners he is stated by one of the witnesses to have added to his ordinary business, as a tailor, the more profitable profession of testifying in land cases.

No one can read the depositions of the numerous witnesses who testify as to his continued residence in Sonoma, as to his circumstances and means of livelihood, and avoid the conviction that his statement as to the occupation of the rancho, his ownership of fifty tame and three or four hundred wild horses, &c., is incredible.

To all this may be added the repeated declarations of Rosa, that he never owned a rancho, and had never applied for one.

This last evidence, however, is met on the part of the claimants by that of George C. Yount and Narciso Botello. The first of these witnesses swears that sometime in 1846 Rosa told him he had a rancho, and to the best of his witness' belief, stated that it lay between Baca and Bidwell's ranch, and was called Pulpones or Pulpinas.

Narciso Botello swears that he remembers that while a member of the Assembly he heard some talk of an application by Rosa for a grant in Sonoma; that he does not know whether he ever obtained the grant, nor was he informed of the fact until he recently saw the papers exhibited by the claimants.

The circumstance stated by Botello may perhaps explain

the testimony of Mr. Yount. It may be that Rosa did endeavor to obtain a grant, or that "there was some talk about it," and he may have stated that fact to Mr. Yount. At all events I do not feel at liberty to receive this testimony of an isolated declaration as outweighing the evidence of so many witnesses, who testify as to his residence, his mode of life, his means of livelihood, and his repeated declarations that he owned no rancho whatever.

Having thus seen that no evidence of the authenticity of this grant is afforded by the archives of the former government, nor by the production of the documents from the proper custody, nor by proof of an occupation of the land, we proceed to consider the evidence as to the genuineness of the signatures.

A large number of witnesses testify, on the part of the claimants, that in their opinion the signatures of Pio Pico are genuine.

On the part of the United States several witnesses testify that they believe them to be forgeries; and one of them expresses the opinion that they were written by the person who wrote the body of the instruments—that is, by Covarrubias.

It is admitted by all the witnesses for the claimants that the signatures of Pico to these documents are unlike his usual mode of writing his name, although it is stated by them that his mode of signing his name was not uniform. The deposition of Pico himself has been taken since the case was appealed, but a traced copy of the grant, and not the original, was submitted to him. The testimony of Pico is singularly guarded. He says he cannot now remember in regard to the original document, "but the signature as it appears in the traced copy *appears* to be my signature, and I *believe* my signature was placed to the document at the time it bears date." He repeats *totidem vabis* the same answer to three successive interrogatories.

To the 7th interrogatory he answers:

"I do not now remember of the grant of land mentioned in the interrogatory, except from the papers shown me, and therefore cannot state further in regard to it."

In answer to the 1st cross-interrogatory, he says :

“My statement in regard to my signature is made from inspection of the papers now presented to me, and not from recollection of signing the originals. I believe, however, from my best recollection, that the original documents were signed by me at the time they bear date.”

To the 2d cross-interrogatory he says :

“I speak of the papers as they are now shown me, and not from recollection of the events as they transpired.”

It is evident that the testimony of the witness merely amounts to a statement that the signature, a traced copy of which is shown him, *appears to be his*. But the fact of the application for, or issuance of the title, he is wholly unable to recollect.

The depositions of John W. Shore and Joseph A. Hinchman have also been taken since the appeal.

These witnesses testify in substance that there is now on file in the County Clerk's office, at Los Angeles, a document, purporting to be signed by Pio Pico, a traced copy of which is annexed to their deposition. One of them swears that he believes the signature to be genuine. The document is dated Oct., 1845, and the signature somewhat resembles, in the formation of the “P's” in Pio Pico's name, the signature in the case at bar. It differs from it, however, very perceptibly. It is this resemblance, such as it is, which alone gives importance to the testimony. But unfortunately it does not appear that this document is genuine. Shore testifies, April 24, 1857, that it had been in its present place of custody, to his knowledge, about three years and a half. Whether it was then filed for the first time does not appear. A document filed at the end of the year 1853, with a signature resembling those now in question, cannot certainly aid the claimants. Shore, it is true, expresses his belief that the signature is genuine, but his testimony is of no greater force than if he had expressed the same belief with regard to the signatures to the papers in this case. It is but one more witness in addition to prove the genuineness of the signature. It is worthy of remark that Pio Pico is not himself asked whether his

signature to this document is genuine, although he resides in Los Angeles county, where the original is kept, and was, it is presumed, accessible.

Since the cause was submitted the Court, being desirous of obtaining more full information from the archives, directed an examination of them by Mr. Hopkins, the clerk in charge. Mr. Hopkins was therefore examined by the court, with liberty to either side to cross-examine him. From Mr. Hopkins' testimony it appears that the signature of Pio Pico appears in various expedientes on file in the archives two hundred and ninety-eight times; that on the journal of the Assembly it occurs one hundred and thirty-one times; and on various grants in 1845 and 1846, about one hundred times.

The signatures in the expedientes, and on the journals, are remarkable for their uniformity. Those on the expedientes are exactly similar, without a single exception; those on the journals are also uniform, with the exception of a single sheet, signed "Pico." This appears to be a loose borrador, or blotter, and the signature is unlike any other that appears in the records.

The one hundred signatures in the grants present the same uniformity, with some exceptions. The first is that in the case of Prudon & Vaca, hereafter alluded to. Mr. Hopkins expresses the opinion that it is a forgery.

The next is a signature bearing a striking resemblance to that last mentioned. It is attached to the certificate of approval of the grant of Petaluma to M. G. Vallejo.

The next is in the decree of concession in case No. 648, before the Commission. It differs, says Mr. Hopkins, from all others that he has seen. The "P's" are made somewhat in the style of those in the present case. The remaining signatures are attached to various documents, dated from January to July, 1846.

All these last differ from all others. They are all uniform and resemble each other. They differ from all others in the form of the "P's."

A letter written by Pio Pico, as administrator of a Mission in 1839, is also produced. The signature resembles

that in the present case. No similar signature occurs later than 1839. At that time he appears to have used this last form of signature, and that previously described indifferently. All these documents were produced in court, and submitted to inspection.

From the foregoing it appears that from the beginning of his official career, up to the year 1846, throughout all the expedientes on the journals of the Assembly (with the exception of one sheet supposed to be a borrador,) and in every grant, with three exceptions, Pio Pico's signature was marked by a uniform and striking peculiarity. That in grants made during 1846, he sometimes used another mode of signature; that this mode is also uniform and similar to that now used by him, as it appears on his affidavit, deposition, &c., in this case.

The three exceptions among the grants made previously to 1846, are first, that to Prudon & Vaca, which is supposed to be a forgery, and which is obviously intended to imitate his usual signature; second, another closely resembling it; and a third, differing from any other, and somewhat resembling that in this case.

Of all of these numerous signatures, not one made since 1839 is found which in any respect resembles those in the grant in this case, except the solitary instance last mentioned, which, as Mr. Hopkins states, differs from all others, though it somewhat resembles those in this case in the form of the "P's."

It thus appears that of 628 signatures made previous to 1846, all except four are uniform. That of these four one is attached to a borrador or blotter; the second is pronounced a forgery; the third strikingly resembles the second. The last is unlike any of the others. No one except the last resembles in any respect those in this case.

It is not enough, therefore, for the claimants to show that Pio Pico had various ways of signing his name. They should prove that the mode adopted in this case was one of the modes used by him. This they have sought to do by exhibiting documents made previously to 1839, but none since. Of 639 signatures made since that time, all are uniform

except 14, and only one bears a resemblance to those in this case.

On the very day which this grant purports to have been issued, his signature appears to other grants, exhibiting its marked and uniform characteristics. In the journals of the Assembly it occurs 130 times, uniform and peculiar. It was certainly a strange accident that in this one grant he did not adopt the mode of signing which he was then, and for a long time previous had been, daily using in his official transactions, but recurred to a mode of signature not used by him since 1839.

All proof of hand writing except the direct evidence of those who have witnessed the act of writing, is but opinion, founded on a mental comparison of the writing in question with other writing of the same party which the witness has seen. But if, as in this case, more than 400 specimens of a signature of a party are presented, no one of which is found except those made previously to 1839, to resemble that in question, the opinions of witnesses who pronounce it genuine from its resemblance to other signatures become of little importance. It will be urged that he did use this signature in 1839, and therefore *may* have used it in this instance. It is undoubtedly possible that such may have been the case, but it is in a high degree improbable that amongst so great a number of signatures marked by a uniform and striking peculiarity, he should, in this instance, have adopted a mode of signature resembling that occasionally used by him six or seven years previously.

The suspicion involuntarily suggests itself, that the grant was not made at the time it bears date. But that either Pio Pico himself, or some one who has forged his name, has by mistake, adopted a signature different from that which at the date of the grant, or subsequently, he was in the habit of using.

On the part of the claimants, M. G. Vallejo, Alvarado, José Castro and Salvador Vallejo, testify that they are acquainted with Pio Pico's signatures, and believe those on the documents in this case to be genuine. The last witness says that he has seen Pio Pico's name to grants, and

that the "P's" in the signatures to the documents are made in his usual style; he also states that Pio Pico wrote his name with uniformity. The gross inaccuracy of both of these statements will not be disputed.

M. G. Vallejo states that Pio Pico made his "P's" like those in this case in his common writing. He has seen such in his grants and approvals, and common writing which he knew to be his. He cannot recollect any particular grant in which that letter is so made. The testimony of Mr. Hopkins exposes the error of this statement. Upon a grant by Pio Pico being shown to the witness he admitted that there was no resemblance between the signature to that document and those in the case at bar, and accounts for it by the observation, "that he may have had more room in that grant, or was perhaps in a different humor."

Andreas Pico swears that the signatures appear to be the true and genuine signatures of Pio Pico. That he formed his opinion by comparing them with those he has seen. That he has seen a great many in the archives.

Manuel Castro, De Zaldo, and Benito Dias, all express the opinion that the signatures are genuine. To this testimony may be added that of Botello, who swears that in his opinion the signatures are genuine.

On the other hand, Richardson, Wm. Carey Jones, James Wilson, a former member of the Land Commission, and Thomas O. Larkin, all testify that in their opinion the signatures are not genuine.

Orlando McKnight testifies that he has been much accustomed to examine and compare handwritings and considers himself capable of judging whether a document is written in an assumed hand. On examining the documents in this case he expresses the opinion that the signatures of Pio Pico were signed by the person who wrote the body of the instruments, *i. e.*, by Covarrubias.

On comparing these signatures with 17 signatures of Pio Pico, found in the records of the Departmental Assembly for 1846, he says that the letters of the name of Pio Pico in the former, as also the rubric attached have the

stiffness and clumsiness difficult to avoid in an imitation, while the 17 signatures appear natural, easy and without restraint. On making a very close examination of the 17 signatures with dividers, he states that he never saw a more uniform signature.

J. H. Purdy, also an expert, is inclined to believe that the signatures to the document are in the same handwriting as the body of the instrument, but is not positive. On comparing these signatures with those in the record of the Assembly, he says that the differences between them consist in the form of the "P's," and in that of the rubrics—also in their general appearance; that the rubrics in the record, "though more condensed in width fall farther below the line of the writing of the signature than those in the documents in this case.

It ought perhaps to be added that neither of these witnesses profess to have any familiarity with Spanish documents, or practice in comparing hand writings in that language.

Col. Jonathan D. Stevenson testifies that he has corresponded with Pio Pico, and seen many documents purporting to be signed by him, that in none of them did the signatures resemble those in this case. That these last are bolder and larger than Pio Pico's usual signature, and the form of the letters, particularly that of the "P's" is unlike his genuine signature. He also thinks, from inspection, that the body of the documents and the signatures were written by the same hand and with the same pen and ink. When asked to explain why he does not believe these signatures genuine, he says, "To use a school-boy's phrase, I think these letters were 'painted,' after they were formed. The difference is more easily pointed out than explained."

I have thus recapitulated, perhaps unnecessarily, all the evidence as to the genuineness of the signatures.

It is certainly not over-stating its force to say that it leaves it open to the gravest suspicions—suspicions which the inspection of the originals has not tended to weaken.

At the end of the grant produced by the claimants, is

the memorandum signed by the secretary, Covarrubias, stating that a note of the title had been taken in the corresponding book. This Covarrubias, in his deposition, states to have been done. The "corresponding book" is found in the archives, but it contains no note of this grant. Covarrubias swears that the book in which he entered this grant was not the one now produced. That it was not bound, but composed of sheets of paper sewed together. That in it were entered various "tomas de razon," in the handwriting of himself and of his two clerks. That he was in the habit of placing his initials, "J. M. C." at the bottom of each entry. The entries for 1845, in the book now produced, are in the handwriting of Francisco Lopez, one of his clerks at that time.

This statement is corroborated by the testimony of Narciso Botello. This witness swears that the book found in the archives is not that used by the government for the registry of titles at Los Angeles. That the latter was a *Cuaderno*, with loose leaves without binding, and generally in the handwriting of Covarrubias. He states that the writing in the last part is that of Francisco Lopez, and that on page 7, to be the writing of Don Augustin Olvera, the Governor's secretary.

On the other hand, Thomas O. Larkin, a witness produced by the claimants, testifies that he was acquainted with the books in the office of the secretary during the years '45 and '46. That there was only one book, and he believes the book produced from the archives to be the one referred to by him. That he saw this book in the secretary's office in the time of Micheltorena, and also among the archives when they were delivered over to the Americans, in August or September, 1846.

No other book of "Tomas de Razon," for 1845, is found in the archives, and the testimony of Mr. Larkin would seem sufficiently to identify it as that in which the entries for that year were made. But even admitting the accuracy of Covarrubias' statement, it is evident that as the entries are in the handwriting of one of his clerks, and the book was delivered to the Americans in 1846, among

the other public records, the entries must have been made nearly contemporaneously with their dates. It is possible, however, that they were copied from some loose sheets or "borradores," such as those spoken of by Covarrubias and Botello, and the absence of any note of this grant, is not therefore entirely conclusive as to its genuineness.

On examining this book, however, it appears that with two exceptions, every grant in colonization of which the expediente is found in the archives, or which has ever been presented to the Board, made from March 1845, to December of the same year, the dates at which the entries begin and terminate, is found duly noted, as of the day on which by the memorandum on the grant the note appears to have been taken.

Of the grants not so noted, one purports to be in favor of Victor Prudon and Marcos Vaca, with an *informe* by José la Rosa, and a provisional licence to occupy signed by Gen. Vallejo. The expediente in this case was not found in the Archives, but was deposited by the plaintiff's counsel on the 9th February, 1852. This grant was rejected by the Board as spurious. Its date is on the 20th Dec. 1845. The last entry in the book is Dec. 23, 1845. Admitting that it is genuine, the absence of the *toma de razon* is no impeachment of the accuracy of the book.

The only other grant omitted, is that to one Gutierrez, dated Nov. , 1845. But the expediente in that case shows that a preliminary grant of the land to the same person had been made in 1844, by Micheltorena. A note of this is found duly entered in that part of the book which contains the *tomas de razon* for 1844.

The fact that a previous grant had been made and duly noted in 1844, sufficiently accounts for the absence of a new *toma de razon* in 1845.

But with these exceptions, the entries are complete. On the very day (Dec. 4th,) on which the grant in this case purports to have been made, two other grants were made and duly entered, on the day previous—one, and another seven days afterwards.

Conceding then that the book now found in the archives was copied from loose sheets containing the original contemporaneous entries, how can we account for the fact that this grant alone, of all those made during the period over which the entries extend, (with the exceptions above noticed,) has been omitted? It is a circumstance pregnant with suspicion.

It is suggested that it is possible that entries in the book now produced may have been taken from the expedientes on file. And as the expediente in this case was not on file, but returned to the party, this grant was omitted. This hypothesis is ingenious but highly improbable. It is to be borne in mind that the book now produced was found among the archives. If it be a copy of that on which the original entries were made, it was made under the former government. The borradores, or loose sheets spoken of by Covarrubias and Botello, have disappeared. If then a clerk of the former government prepared this copy, he probably did so, not from the expedientes on file, but from the borradores, which according to Covarrubias, existed at least so late as the spring of 1846, when he went out of office. The fact that these borradores have disappeared, and that the book now produced alone remains, favors the hypothesis that they may have been destroyed when the copy was taken. If this be so it is as difficult to suppose that an entry of this grant was accidentally omitted, in a copy otherwise so complete and accurate, as to suppose it to have been omitted on the book in which the entries were originally made. In either case the hypothesis if not impossible is in a high degree improbable.

The certificate of the approval of the Departmental Assembly is dated Dec. 18th, 1845. The resolution of approval appears to have passed on the 11th of the same month.

The records of the proceedings of the Assembly at the close of 1845 and beginning of 1846, are preserved. They show that on the 8th October, 1845:

“The *sessions* of the Assembly were suspended for the

rest of the year, in consequence of permission having been granted to the Señores Deputies, who reside out of this capitol, to retire to the places of their residence, in view of the injuries they must suffer in consequence of their salaries due them respectively, as functionaries, not being paid."

A publication of the foregoing in all the pueblos of the department was ordered to be made Oct. 11th, 1845.

The next session of the Assembly, as shown by its journals, was on the 2d March, 1846. The journals state that the Governor and certain deputies, who are named, had "assembled for the purpose of reopening the ordinary sessions which, by a resolution of the body, had been suspended for the balance of last year. Whereupon the proceedings of the 8th day of October, of the last year, were read and approved," &c.

It is evident that no ordinary session of the Assembly was held on the 11th December, the day on which this grant is certified to have been approved.

It is contended, however, that extraordinary sessions were held, of which no record was kept, and the testimony of several witnesses has been taken to establish the fact.

Juan Bandini testifies that he was elected a member of the Assembly in 1846, and took his seat in the beginning of that year; that he knows that an extraordinary session was held from the 8th of October until the end of the year 1845; that the ordinary session was commenced in the month of February, 1846, and of this he was a member. The business transacted at the extraordinary sessions related to the mission of one José Maria Ijar, and the confirmation of land titles, and granting the same."

Santiago Arguello makes the same statement in almost the same language. Both repeat several times that they took their seats in the ordinary session, held in February, 1846; according to Arguello about the first of that month.

Unfortunately for these witnesses the record of the first ordinary session of 1846 is preserved, whereby it appears, as we have seen, that the Assembly resumed its ordinary sessions on the 2d March, and not on the 1st of February;

that the proceedings of the last ordinary session, to wit., that of the 8th of October, 1845, were first read and approved, and that the next business transacted was the reception of the credentials of Don Juan Bandini and Don Santiago Arguello; that the usual proceedings were on motion dispensed with; that the newly elected members were received by a committee of the body; that after making oath, as prescribed by law, they took their seats, and were congratulated by the Hon. President, who expressed his pleasure at their incorporation into the body.

It is singular that both of these witnesses should have fallen into the same error with reference to a fact of which they speak so positively. It justifies the suspicion that they may also be mistaken in their statement that extraordinary sessions were held from Oct. 8th, until the end of the year. The journals of the Assembly show that secret and extraordinary sessions were held on various days between March 4th, 1845, and October 8th, of the same year. They frequently took place on the same day with an ordinary session, and the journals of the latter mention that the Assembly went into secret session on motion, &c. These secret or extraordinary sessions appear to have been not unlike the executive sessions of the United States Senate, except that in some instances the proceedings at a secret session were read and approved at the next ordinary session.

But the extraordinary or called sessions which are supposed, by the claimants, to have taken place at the end of 1845, after the suspension of the ordinary sessions for the rest of the year, are of a different character. A document is found in the archives, however, which seems to favor the idea that such may have been held. A committee, to whom a motion that the Assembly dissolve itself, or adjourn, was referred, reports that it had no such power, as it was always in session as the council of the government; and they recommend that, after despatching some pressing business which would come up in October, the Assembly suspend its ordinary sessions for the rest of the year, and that permission be given to the deputies residing at a distance to return home.

The resolution of adjournment passed Oct. 8th, seems to have been in pursuance of this recommendation.

The cause having been reopened since its first submission, the evidence of Narciso Botello was taken in court.

This witness states that though he does not recollect the fact, he has no doubt that there were extraordinary sessions in 1845, for he has seen documents which show it. A document from the archives was shown to the witness, which he stated to be in the handwriting of Don A. Olvera, Secretary to the Governor. This document appears to be a "*lettra convocatoria*," or summons, to the members of the Assembly, to meet in extraordinary session. Whether or not the session took place the witness is unable to recollect, but he presumes, from the summons, that it did. If there were any such in December the witness states that he must have attended them, unless prevented by illness.

From all the evidence that can be obtained I think it not impossible that extraordinary sessions may have been held after the adjournment of the 8th October.

The cause of that adjournment, however, as declared in the resolution above cited, is somewhat inconsistent with the idea that the members immediately reassembled in extraordinary session. If they did so, the record of their proceedings has been lost by another of those unfortunate accidents which have attended this case at every step.

But in addition it is not a little remarkable that if a part of the business of this extraordinary session was the confirmation and granting of titles, no title whatever of all those granted previous to the 2d March, 1846, appears to have been approved at any extraordinary session of the Assembly, between its adjournment on the 8th October, and the reopening on the 2d March, with two exceptions—the grant in this case and that of Victor Prudon, above noticed. Every other grant made subsequently to the 8th October, and among them one dated December 4th, the very day on which this title purports to have been issued, was reserved until the ordinary session of March, and was at that session, as appears by the record, presented and approved.

It is also worthy of observation that Narciso Botello does not pretend to recollect that an extraordinary session was in fact held at the time at which it appears to have been convened—still less that at any such meeting this grant was approved. He left Los Angeles on the 25th December. The resolution of approval was passed, if at all, on the 11th. The grant was large, and in payment of public dues. Had he been present at any session at which it was discussed and approved, it would seem probable that he would have recollected it. His failure to do so, however, is by no means a strong circumstance against the genuineness of the certificate. It deserves, however, to be noted and considered amongst the other circumstances of the case.

But the United States have produced direct testimony to prove the time and place at which these papers were rubricated. Rafael Guirado testifies that in the month of August, 1853, about 9 o'clock, A. M., Jose de la Rosa, in company with the Messrs. Luco and Salvador Vallejo, came to the house of Gen. Vallejo and inquired for the latter. After about two hours he came in, when they all entered his office, where they seated themselves at a table. The witness overheard their conversation, which related to "settling" the rancho of Ulpinas. Gen. Vallejo offering to put 300 mares upon it, &c. The next day a similar interview took place, and after the rest were gone, Gen. Vallejo said to the witness, "I am transacting some important business," and asked if he had overheard it. To which the witness replied that he had. The General, after some expressions of his confidence in the witness, proceeded to inform him of the "plan" they had arranged. "The title," he said, "we have made in the name of Rosa. It supposes a certain amount to be due him as printer at Monterey; that his brother Salvador had gone to Los Angeles and succeeded in obtaining the signature of Pio Pico to the title." The witness then said to Vallejo that the title was false, to which the General replied, "I know it. It is in this way we have planned; how can it be false, it has the signature of Pio Pico?" After some further conversation de-

tailed by the witness, Gen. Vallejo said in reply to an observation by the witness, that the title was void, and it would in time be discovered. "In that case it would be diamond cut diamond," and he explained this expression to mean that if there were six or seven persons to swear that the title is null (nulo) he would bring ten or twelve to swear to its genuineness. If this story be true, the character of this claim is placed beyond a doubt.

Girado has, however, been impeached by various witnesses on the part of the claimants, and sustained by perhaps an equal number on the part of the United States. It would be useless, perhaps impracticable, to attempt to decide upon a comparison of this testimony whether or not his character is such as to justify a belief in his statements. Whatever it was, whether infamous or respectable, one fact is clear, that Gen. Vallejo, so late as March, 1855, corresponded with him on terms of friendship and intimacy. The relations which Gen. Vallejo's letter of March 4th, 1855, show to have existed between them, must either relieve Girado from the imputations cast upon his character, or that of Vallejo himself must in some degree be compromised.

If Girado's testimony stood alone, and if in other respects this claim seemed fair and genuine, I should hesitate long before rejecting it on the faith of such a statement. I have alluded to it as an item of evidence entitled to consideration.

It is urged that according to this story, the signatures are the genuine signatures of Pio Pico, though the document may be antedated, and it disproves the theory of the United States that they are forged.

To this it may be replied, that Gen. Vallejo may not have known or may have been unwilling to disclose the name of the person who forged the signatures. The risk of punishment to him would be far greater than to those who merely expressed an opinion as to their genuineness, or Pio Pico may in fact have signed the document but have forgotten to adopt the mode of signature used by him at its date.

Since the case was re-opened testimony has been taken with regard to the seals. It appears by the evidence of Wm. B. McMurtrie, that the impression or seal on the grant in this case is different, and evidently made by a stamp different from that used on the petition and the certificate of approval.

The impressions on these latter are identical with those used on various expedientes and grants exhibited to the witness. Four of these were produced in Court dated at various times from April 21, 1843 to May 2d, 1846.

The impression on the grant in this case is entirely dissimilar, and the witness not only expresses the positive opinion, but demonstrates that it could not have been made with the same seal as that used on the other documents. Photographs have been taken of these impressions, and the difference is obvious on inspection. How then is this fact to be accounted for? Covarrubias swears that he recollects of only one seal being used in the office of the Secretary. How happens it that the petition and certificate bear the impression of the genuine seal, while the grant has an impression of one which, if not proven not to be genuine, is not found on any other document in the archives? It is true that this fact is not specifically sworn to by any witness, but since the testimony of McMurtrie was taken, ample opportunity has been afforded to the claimants to examine the archives. If a seal similar to that on the grant could have been found, it would doubtless have been produced.

It is argued that this testimony establishes at least the genuineness of two of the seals on these papers, even though it casts a doubt on the third. But we have already seen that at the time the grant was exhibited to Covarrubias and Pio Pico to procure the affidavits on which the action of Congress was founded, it was unaccompanied by either the petition or the certificate of approval. How these papers were separated from the grant, or how since reunited to it, does not appear. The difference, therefore, in the seals tends to corroborate our suspicions that the petition and certificate may have been prepared subsequently

to the grant, as they certainly did not appear in the cause until long after the production of the grant to Covarrubias and Pico.

It does not appear where or in whose custody the seal of the former government now is, and if any one of the documents exhibited bears a spurious seal, it throws a doubt upon the genuineness of them all, which is not dispelled by the fact that on two of them the seals appear to be genuine.

Another circumstance is also worthy of observation. Eleven expedientes have been produced from the archives with a view of exhibiting not only the signatures of Pio Pico, but his title or the description of his office, as contained in the headings of the grants.

These expedientes are regularly numbered, and are dated at various times from Nov. 22d, 1845, to Dec. 19th, 1845. In all of them Pio Pico is described as "Vocal decano de la asamblea departamental y Gobernador provisional de las Californias."

In the grant produced in the case at bar, and in the certificate of approval, he is described as "Vocal decano de la Exma Asamblea del Departamento de las Californias y encargado del gobierno del mismo por ministerio de la ley."

It is singular that if this grant be genuine, the Governor should in this one instance have deviated from the form which he had been using almost daily, in his official acts for a considerable time, and which he adopted in three grants undoubtedly genuine, made on the very day on which this grant purports to have been issued.

It is another of those extraordinary accidents which it is difficult to suppose could all have occurred by a kind of fatality, in one unfortunate case.

From the foregoing review of the evidence in this case, it is, I think, apparent that at every point it is liable to the gravest suspicion.

We find that papers constituting a complete title for one of the most valuable ranchos in California, have been unaccountably withheld from the Board appointed to ascertain their validity until the time for presenting them

has expired, although the lands are situated in one of the most fertile and inhabited districts of the State, and although all the neighbors of the grantee, including his friend and patron, General Vallejo, duly presented their claims for confirmation.

We find that when the grant was submitted to counsel for inspection, and to Pico and Covarrubias for their affidavits, if indeed it was the same paper as that now presented, it was certainly unaccompanied by the petition, and almost certainly unaccompanied by the certificate of approval.

That these papers have since been produced attached to the grant, but when and by whom, we know not. That the petition is found, not in the archives which was the legal and usual place of custody, but in the possession of the party, though the Secretary of the government has no recollection of ever having withdrawn any expediente from the archives, nor does he remember sending any document whatever to the grantee in this case.

How, and why, and when, and by whom this petition was obtained from the archives we are wholly uninformed, except by the statement of De la Rosa that it was delivered to him by Vallejo, which the latter denies. Why and how it became separated from the grant is likewise unexplained, as is also the singular fact that having this petition in their possession, the claimants should have procured from Covarrubias the affidavit stating that he did not know where it was, and "that the practice was to return the petition with the grant."

If it was not then in the claimant's possession, where was it? in whose custody? and how and whence has it since been procured?

We find also that the pretended occupation by De la Rosa of this land has been disproved by so great a preponderance of evidence, as to suggest the most painful suspicions.

We find the archives not only failing to exhibit any trace of the existence of the grant, but unless a series of extraordinary accidents be supposed, absolutely disproving its existence.

We find that the signatures of the Governor, though sworn to as genuine, are by many disinterested witnesses, declared to be forgeries; while the Governor himself testifies with caution and reserve, and is wholly unable to recollect a single circumstance connected with the grant.

We find that in the opinion of many respectable persons, the characters of the principal witnesses for the claimants are such as to render them unworthy of belief.

And finally, we find the suspicions of the fraudulent character of this claim, so vehemently excited by every circumstance attending it, are confirmed by the detailed and circumstantial disclosure by a witness who, whatever his character, was certainly in the confidence of Gen-Vallejo, of the time and place and manner of its fabrication.

Such an array of proofs I confess myself unable to resist.

But in addition :

To hold this grant genuine we must suppose that by some unexplained accident, and contrary to custom, the petition was delivered to the party—that it remained with the grant, in his possession unseen by any one, and unsuspected by almost all of his neighbors and intimate associates. That the owner of so valuable an estate was content to remain a dependant upon the bounty of a wealthy friend, or to obtain his livelihood by mending clothes and similar employments, and never himself thought, or was reminded by his friend of the necessity of presenting his title for confirmation. That he has frequently and without a motive declared that he never obtained any grant whatever.

That the petition, the grant, and the certificate of approval, though together in the possession of the grantee, were by some unexplained accident separated when he transferred his title to the claimants. That the first and the last documents, after disappearing for a time, were in some unexplained way recovered, and re-united to the grant after the papers had been submitted to counsel and affidavits to be laid before Congress had been procured.

We must further suppose, that the note of the grant was taken in a book which has disappeared. That in the book which remains, and is by one witness identified as the book in which titles were noted, a note of this grant was by some strange accident omitted, although every other grant issued during the period over which the record extends, is found duly noted, with a single exception, readily accounted for.

We must suppose that in this instance, almost solitary, the Governor made an extensive grant without requiring a single report, or informe, and has entirely forgotten the circumstance.

We must further suppose, that the Departmental Assembly held an extraordinary session, of which their journals contain no trace, and this, after a formal adjournment for the rest of the year, and after permission given to the members to return home. That the journal of their proceedings on re-assembling, alludes to the fact of their previous adjournment for the balance of the last year, and shows that the reading and approval of the proceedings of the last ordinary session was the first business transacted, while all mention of the supposed extraordinary sessions in the interval is omitted.

We must further suppose, that all the grants issued in the interval between the adjournment on the 8th October, and the reassembling on the 2d March, were reserved by the Governor until after the ordinary sessions had recommenced, with the exception of this grant and one other rejected by the Board as spurious.

We must suppose that the Governor—although his name appears to public documents of various kinds signed with singular uniformity several hundred times—in this instance adopted a mode of signing, either never on any other occasion made use of by him on official documents, or long disused. And this notwithstanding that on the very day on which this grant was signed, as well as before and afterwards, his signature appears on various documents exhibiting the same uniform and striking peculiarities visible throughout all the records of his official action.

We must suppose that the seal used on this grant is genuine, though it was not only different from that used on the petition of the 8th November and from that on an expediente of the 19th December, but different from any elsewhere found in the archives, and this, without proof that there was more than one seal, and in the face of the declaration of the secretary that there was *but one*.

And finally, that a wretch has been found with intelligence and depravity enough to invent and swear to a detailed and circumstantial account of the fabrication of these documents.

Such a series of improbable hypotheses I have found it impossible to believe.

I have given to this case an unusual degree of labor and attention, and have endeavored to arrive at a just and impartial conclusion.

My conviction is that it ought not to be confirmed.

June 22, 1858.

SUPREME COURT OF THE UNITED STATES.

No. ~~257~~. 144.

THE UNITED STATES, APPELLANTS,

vs.

CHARLES MEYER, WILLIAM BENNETZ, — HAND, AND
— DUNCAN.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

G. S. GIBSON, Printer, 511 Ninth street, Washington, D. C.

SUPREME COURT OF THE UNITED STATES.

No. 257.

THE UNITED STATES, APPELLANTS,

vs.

CHARLES MEYER, WILLIAM BENNETZ, — HAND, AND
— DUNCAN.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

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GIDRON, print.

Transcript of the proceedings in case No. 199—Charles Mayer et al., claimants, vs. The United States, defendant—for the place named “Rancho de German,” Mendocino Co.

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal’ a.

Be it remembered, that on this twenty-seventh day of April, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Charles Mayer et al., for the place named “Rancho de German,” was presented and ordered to be filed and docketed with No. 199, and is as follows, to wit:

(Vide pages 3 and 4 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

WEDNESDAY, *April 28th*, 1852.

In case No. 199, Charles Meyer et al., the deposition of Ernest Rufus, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed, and is in the words and figures as follows, to wit:

(Vide pages of this Transcript, 5, 6, 7, 8, 9 and 10.)

THURSDAY, *May 6th*, 1852.

Case No. 199, Charles Meyer et al., on motion of the counsel for the claimants, set for hearing on Tuesday, the 18th instant.

TUESDAY, *June 1st*, 1852.

Case No. 199, Charles Meyer et al., was set in its order for hearing.

WEDNESDAY, *December 22d*, 1852.

Case No. 199, Charles Meyer, for the place named “German,” called. Argument by the counsel for the claimant opened; answered by the U. S. associate law agent, and closed by the claimant. Case submitted with the evidence, and taken under advisement by the board.

[REC. CCLVII, D. T. 1857.]—1

THURSDAY, *December 23d*, 1852.

In case No. 199, Charles Meyer, for the place named "German," Commissioner Harry J. Thornton delivered the opinion and the decree of final confirmation of this board.

Ordered, That the opinion and decree of final confirmation of this board, delivered this day in this case, be recorded on the journal.

Which opinion and decree are in the words and figures as follows, to wit:

(Vide pages of this Transcript 25 and 26.)

Petition.

To the U. S. Land Commission for the ascertaining and settling of private land claims in California:

The petition of Charles Meyer, William Bennety, Carlos T. Glein, Hand, and Duncan, respectfully sheweth, that heretofore, to wit, on the 21st of July, 1845, a certain Ernest Rufus made and presented his petition, in writing, to José de la Rosa, first alcalde of Sonoma, soliciting of him the permission to occupy a certain tract of land, known as "Rancho de German," an accurate description of which will be given hereafter. That said alcalde, on the 21st of July, 1845, gave such permission accordingly.

That said Rufus, on the 7th of April, 1846, presented a petition in writing to Pio Pico, governor of California, praying for the grant of said land so occupied by him, and that said governor thereupon, to wit, on the 8th of April, 1846, declared said Rufus the legal owner of said land, and directed the proper documents constituting title to be executed and delivered to said Rufus.

That a formal grant issued accordingly to the same on the 8th day of April, 1846; and that the departmental assembly at Monterey, in their session on the 10th of June, 1846, fully approved and confirmed the same.

That said Rufus, by various conveyances, transferred the whole of said land to your petitioners, and that the same are at present the owners of the same and in possession thereof.

And your petitioners further say, that the petitions of said Rufus, the report of the alcalde, a duly certified copy of the grant and of the original map, together with the action of the departmental assembly on the subject, are on file in the archives of California now in possession of the surveyor general of the U. S. of America for the State of California, and that duly certified copies and translations of the same are herewith submitted to your honor's inspection and prayed to be made a part of this petition; that the original grant and the conveyances from Rufus to your petitioners are in the hands of your petitioners, and ready to be offered in evidence whenever required. And your petitioners further say,

that said land is known under the name of "Rancho de German;" is situate in the present county of Mendocino, north of the fort Ross, and is bounded as follows: Commencing at a point on the coast of the Pacific ocean about one and a half league north of the fort Ross, where the "Arroyo Dichoatta" empties in the sea; thence running along the low-water mark of the Pacific ocean to the mouth of the "Arroyo Valale;" thence along the middle of said arroyo southerly about two leagues and a half; thence in the nearest direction to the Sierra; thence along the ridge of the Sierra Tel-smite at a distance of three quarters of a league from the sea-shore, about two leagues and a half to a point due east of the mouth of the Arroyo Dichatta first above named; thence due west to the place of beginning; containing five square leagues, more or less. And your petitioners further say, that the said Ernest Rufus has in the possession of said land since he obtained the permission of occupancy by the alcalde aforesaid, and that your petitioners succeeded said Rufus in the possession and ownership thereof on the days of his said conveyances to them; that they are not aware of the existence of any title conflicting with or superior to their own. They therefore claim to be the legal owners of said land, and pray that your honorable body will confirm and validate their claim and title thereto.

CLARKE, TAYLOR & BECKH,
Atty's for Petitioners.

Filed in office April 27th, 1852.
(Signed)

GEO. FISHER, *Sec'y.*

Deposition of Ernest Rufus.

OFFICE OF THE BOARD OF LAND COMMISSIONERS
FOR CALIFORNIA, *San Francisco, April 28, 1852.*

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Ernest Rufus, a witness produced in behalf of the claimants, Charles Meyer et al., whose petition is No. 199 on the docket of said commissioners. The witness, being duly sworn, testified as follows—the law agent of the United States was notified, and attended by Mr. Greenhow:

Questions by Claimant.

Quest. 1. What is your name, age, and place of residence?

Ans. My name is Ernest Rufus; my age 40 years; my place of residence Sonoma, State of California.

Quest. 2. Do you know the land claimed in this petition?

Ans. I do.

Quest. 3. State if you obtained a grant for it, and at what time?

Ans. I did obtain a grant for it in April, 1846, from Pio Pico, at that time governor of California.

Quest. 4. Have you examined page 4 and the first part of page 5 of document marked (C,) purporting to be a translation of the copy of said grant contained in the expediente, a certified copy of which is on file in this case, marked "B?" If so, state whether the same is a correct translation of the grant made by Pio Pico to you?

Ans. I have examined the said pages on the said document, and I think it is a correct translation, having compared it with the original grant now shown to me.

Quest. 4. Are you acquainted with the handwriting of Pio Pico? and if so, state whether the signature to said grant is the genuine signature of said Pico; and if so, at what time was said grant signed by him?

Ans. I am acquainted with the handwriting of Pio Pico, and know it to be his signature, as I saw him sign it; I know it to have been signed in the month of April, 1846.

Quest. 5. State whether you took possession of and made improvements on the land granted; and if so, at which time and to what extent?

Ans. I had possession of the land before I asked for the grant, and continued in possession until I sold it to the present petitioners in 1849. I built a dwelling-house and several Indian habitations, and grist-mill. The house and the Indians' huts were completed within one year from the time of getting the grant, and the mill was in such a state of forwardness that it was completed within fifteen months after the grant was made. I had placed some four hundred cattle and horses on it in the course of the first year after the grant, and by the time I sold it they had increased to 850. I cultivated in grain about forty acres of land.

Quest. 6. At the time you obtained the grant had you become a naturalized citizen of the Mexican republic?

Ans. I had; I obtained my naturalization papers in May, 1844, from Governor Micheltoarena.

Quest. 7. State if you found any difficulty in getting your grant on account of your not being a native citizen of Mexico?

Ans. Upon my application for this land, I was informed that, from its situation in relation to the seacoast, I could not obtain the grant, although a naturalized citizen, unless certain things had been done by me, such as bearing arms for the country, or having done service as civil officer, or had introduced some useful art or manufacture; I was informed distinctly by the secretary that grants of land so situated could not be made, except to native citizens or to naturalized citizens, unless they possessed some of the qualifications above mentioned. Whereupon I proved by Andreas Pico and Juan Castañeda, who were officers then in the California service, that I

had served as a lieutenant with Micheltorena against Castro and his party under a commission of lieutenant obtained from Micheltorena; and that I continued in service some twelve or fifteen months.

Quest. 8. State whether the present claimants took possession of the land upon their purchase from you; and if so, whether they are now in possession as the recognised owners?

Ans. They did take possession of it, and hold it at present.

Questions by the United States Law Agent.

Quest. 1. Did you receive the title now presented from Governor Pico himself, or from any one else?

Ans. I received it from himself at the time when he signed it.

Quest. 2. From whom did you receive the act of confirmation by the assembly?

Ans. I did not receive it.

Quest. 3. Why did you not receive it?

Ans. Because the assembly was not in session at the time I got the grant.

Quest. 4. Do you know that the title was confirmed by the assembly; and if so, when?

Ans. I heard, accidentally, that it was confirmed, but was not sure of it.

Quest. 5. Did you remain at Angeles during all the time of the session of the assembly after receiving your title?

Ans. Immediately on receiving my grant I left Los Angeles for my land, at which time the assembly was not in session.

Quest. 6. Do you know that the assembly was in session at Angeles after you left that place?

Ans. I understood that it was, from some Californians.

Quest. 7. Did you ever receive juridical possession of your land?

Ans. I made application to the alcalde of Sonoma for juridical possession of the land; he told me that he would have occasion to survey other lands in that neighborhood soon; but the American war breaking out, he was removed from his office before he did so.

Quest. 8. When you served as lieutenant under Micheltorena against Castro, did you not also serve against Pio Pico, the governor from whom you received your grant?

Ans. I did, but he was not governor when I served against him.

Quest. 9. Did you believe that he had authority, as governor, to grant your title?

Ans. I did believe that he had authority to make a grant, and that his grant was good, because it was said that he had been recognised as governor of California by the Mexican government.

ERNEST RUFUS.

The law agent present.

Subscribed and sworn to before me the 28th of April, 1852.

HARRY J. THORNTON,
Com'r, &c.

Filed in office April 28th, 1852.

(Signed)

GEO. FISHER, *Sec'y.*

1846.

Espediente promovido por Don Ernesto Rufus en pretencion del terreno nombrado German.

507.

S'or alcalde lo. de Sonoma: Ernesto Rufus, naturalizado Mejicano y arecinda do en esta frontera de Sonoma, ante V. con debido respecto y como mejor hallá lugar en d'ro digo q. teniendo un numero considerable de ganado y caballos, y careciendo de un terreno propio para su seguridad, solicito de V. se digne conceder me licencia provisional para ql. pueda fabricar casa y meta mis bienes en el paraje valdio llama rancho de Ross, mientras occuro al gobierno para conseguir legalmente los titulos.

Por tanto a V. suplico se digne acceder á mi pedido de q. recibire gracia.

Ross, Julio 21, de 1845.

ERNESTO RUFUS.

No va en papel sellado por no haver lo en este lugar.

Jusg'o de Sonoma.

Perede ocupar lo provisi onalmente la parte interesada por el termino de un año, y si complido el tiempo no se presentare con su titulos legales sera denunciabile como valdio.

Sonoma, Julio 21, de 1845.

JOSÉ DE LA ROSA.

[*Here follows map—original, page 12.*]

Pio Pico, vocal decano de la Asamblea Departamental y Gobernador provicional de las Californias.

Por cuanto Dn. Ernesto Rufus, ciudadano Mejicano por naturalizacion, ha pretendido para su beneficio personal el paraje nombrado

rancho de German, en las fronteras de Sonoma al Norte, de este departamento y mas arriba del establecimiento de Ross q. ocuparan los Rusos practicados previamente los averiguaciones consernientes usando de las facultades q. me son conferidas á nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno declarandole la propiedad de el por las presentes letras de conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, a reserva de la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes.

1o. Podra cercarlo sin perjudicar las travecias, caminos y servidumbres lo disfrutara libre y esclusivamente, destinandolo al uso y cultivo q. mas le acomode.

2o. Solicitara del Juez respectivo le de la posecion juridica en virtud de este despacho por el eual se demarcaran los linderos con las mojeneras necessarios.

3o. El terreno de q. le hace donacion es puramente el de cinco sitios de ganado mayor El Juez q. lo posecione lo hara medir conformes á ordenanza quedando el sobrante q. resulte á la nacion pa. los usos que sean convenientes.

En consecuencia mando q. teniendose el presente titulo por firme y validero. Se tome razon de el en el libro a q. corresponda y se entregue al interesado para su resguardo y demas fines. Dado en la ciudad de los Angeles, este papel comun por falta de sellado á ocho de Abril, de mil ochocientos cuarenta y seis.

ANGELES, *Mayo 8o, de 1846.*

Dado cuenta en sesion de hoy con este espediente mando pasar á la comision de terrenos valdios.

PIO PICO, *Presidente.*

AUGUSTIN OLVERA, *Secretario.*

Ex'mo S'or Gob'or:

Ernesto Rufus, natural de Alemania, y naturalizado en la republica como consta en la adjunta carta, anté V. E. respectuosamente y como mas haya lugar en derecho me presento y digo, que en el año pasado me concedia el s'or alcalde de Sonoma, ocupar provisionalmente el terreno conocido con el nombre de rancho de Ross, q. ocuparon los Rusos en aquella frontera manifestando á V. E. que hay la equivocacion en la instancia q. presenté al solicitar dicho terreno de haberse presto el rancho de Ross, debiendo ser el rancho de German como consta en el disceno que debidamente acompano y como este al esperar el termino q. se mesenalo para solicitar el titulo correspondiente de que carezco.

A. V. ocurro suplicando le tenga la condad de mandarse me estienda aquel documento de cuya gracia y espero mereser vivire

á V. E. reconocido; serviendose admitir esta en papel comun por falta de sellado correspondiente.

Angeles, Abril 7, de 1846.

ERNEST RUFUS.

ANGELES, *Abril 8o, de 1846.*

Vista la peticion con q. da principio este espediente lo q. en el se ha praticado con todo lo demas q. se tuvo presente y ver convino de conformidad con lo dispuesto en la ley de 18 de Agosto, de 1824; y reglamento de 21 de Noviembre, de 1828, se declara dueño en propiedad del paraje nombrado rancho de German en las fronteras de Sonoma y mas arriba del establecimiento Ross q. occubar los Russos al ciudadano por naturalizacion Ernesto Rufus.

Libresele al titulo correspondiente al interesado en estencion de cinco sitios de ganado mayor y somitase esta concessión á la aprovacion de la ex'ma asamblea departamental.

Pio Pico, Gobernador de las Californias, por ministerio de la ley asi lo mandé decreté y firme doy fe.

PIO PICO.

La comision de terrenos valdios a examinado con atencion el presente espediente promovido pr. el ciud'o por naturalizacion Ernesto Rufus, del paraje conocido rancho de German q. se fue concedido pr. el superior gobierno departamental con arreglo, a las leyes de la materia en este *concepto* posse á la deliberacion de V. E. la siguiente proposicion.

Se aprueba la concession hecha al ciudadano pr. naturalizacion Ernesto Rufus del paraje conocido rancho de German jurisdiccion de Sonoma en estencion de cinco sitios de ganado mayor, segun titulo librado con tha. de 18o. de Abril, del presente año conforme a la ley de 18o. de Ag'to, de 1824, y al articulo 5, del reglamento de 21 de 9'bre, de 1828.

Sala de comis, en la ciudad de Los Angeles, Junio 2, 1846.

S. ARGUELLO.

ANGELES, *Junio 10, de 1846.*

En sesion de este dia aprobo la ex'ma asamblea departamental la proposicion del dictamen anterior.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, Samuel E. King, surveyor general of the United States for the State of California, and, as such, now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory in department of Upper California, do hereby certify, that the eleven preceding and hereunto annexed

pages of tracing paper, numbered from one to eleven, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Fr'co, Calif'a, this 1st day of April, 1852.

SAMUEL D. KING, *Surv'r G'l.*

Translation Document C.—No. 199.—Rancho de German.

To the first alcalde of Sonoma: Ernesto Rufus, a naturalized Mexican and a resident of this frontier of Sonoma, with due respect and in the best legal form says, that having a considerable number of cattle and horses, and wanting a suitable piece of land for its security, I solicit you that you may please to grant me provisional permit, that I may be enabled to build a house and keep my property on the vacant location called Rancho de Ross, while I apply to the government to obtain the legal title. Therefore, I pray that you may please to comply with my petition, whereby I shall receive favor.

Ross, 21st July, 1845.

(Signed)

ERNESTO RUFUS.

Not written on stamped paper, because there is none in this place.

First Justice's Court of Sonoma.

The party concerned can occupy it provisionally for the term of one year, and if at the end of that time he shall not present himself with his legal title, it shall be denounced as vacant.

Sonoma, July 21st, 1845.

(Signed)

JOSÉ DE LA ROSA.

Most Excellent Governor:

Ernesto Rufus, a native of Germany and naturalized in the republic, as appears from the annexed certificate, respectfully and in the most just way presents himself before your excellency and says, that last year the alcalde of Sonoma granted me the provisional occupation of the land known by the name of Rancho de German, which is vacant, and higher up than the establishment of Ross, which the Russians in that frontier occupied, showing your excellency that there is a mistake in the document which has been presented in soliciting said land, they having written the Rancho de Ross, instead of the Rancho de German, as appears from the sketch that I duly forward; and as the period that is prescribed to me for soliciting the corresponding title is going to expire, I apply to your

[*REC. CCLVII, D. T. 1857.*—2

excellency entreating you that you will have the goodness to order that document made out to me, which favor I hope to deserve, and for which I shall be obliged to your excellency; this being admitted on common paper, for want of the corresponding stamped. Angeles, April 7th, 1846.

(Signed)

ERNESTO RUFUS.

ANGELES, *April 8th*, 1846.

Having examined the petition that heads this record of proceedings, that which has been done pursuant to it, with everything else that has been borne in mind and was proper to attend to in conformity with the requisition in the law of 18th of August, 1824, and regulation of 21st November, 1828, I declare the naturalized citizen Ernesto Rufus owner in fee of the place called Rancho de German, on the frontier of Sonoma and above the establishment Ross, which the Russians occupied. Let the proper title deed be issued to the party for the extent of five square leagues, and submit this grant to the approbation of the most excellent departmental assembly. Pio Pico, governor ad interim of both Californias, thus ordered, decreed and signed. I attest it.

(Signed)

PIO PICO.

Pio Pico, senior member of the Departmental Assembly, and Provisional Governor of both Californias.

Whereas Don Ernesto Rufus, a Mexican citizen by naturalization, has solicited for his personal benefit the location called Rancho de German, in the frontiers of Sonoma, at the north of the department, and above the establishment of Russ, which the Russians occupied, after having previously made the necessary investigations, in the exercise of the powers vested in me, in the name of the Mexican nation, I have, by decree of this day, granted to him the mentioned land, declaring it to be his property by these letters patent, in conformity with the law of the 18th of August, 1822, and regulations of the 21st November, 1828, subject to the approbation of the most excellent departmental assembly, and under the following conditions:

1st. He may fence it without any prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, appropriating it to the use and culture that may best suit him.

2d. He shall solicit from the respective judge to give him juridical possession in virtue of this document, by whom the boundaries shall be marked with the necessary landmarks.

3d. The tract of land granted is merely of an area of five square leagues, (sitios de ganado mayor;) the judge who shall give possession of it will have it measured conformable to ordinance, leaving the surplus that may result, to the nation for convenient pur-

poses. Consequently I order that the present title, being held as firm and valid, it be entered in the corresponding book and be delivered to the interested party for his security and other purposes. Given in the city of Los Angeles, on this common paper, for want of stamped, on the 8th of April, 1846.

ANGELES, *May 8th*, 1846.

In to-day's session were reported and ordered to be transmitted to the committee on public lands.

(Signed)

PIO PICO,
President.

AUGUSTIN OLVERA,
Deputy Secretary.

EXCELLENT SIR: The committee on public lands have examined with attention the present proceedings at the instance of the naturalized citizen Ernesto Rufus for the parcel of land called Rancho de German, which was granted to him by the superior departmental government, conformable to the laws on the subject, in virtue of which the committee submits to your excellency's deliberation the following proposition: They approve of the grant made to the naturalized citizen Ernesto Rufus of the place called Rancho de German, in the jurisdiction of Sonoma, extending five square leagues (5 sitios de ganado mayor) according to title-deed issued on the 8th of April, instant, conformable to the law of 18th August, 1824, and the article 5th of the regulations of 21 November, 1828.

Hall of committees, in the city of Los Angeles, June 2d, 1846.

(Signed)

S. ARGÜELLO.

ANGELES, *June 10th*, 1846.

In to-day's session the most excellent departmental assembly approved of the proposition in the foregoing opinion.

Filed in office April 27th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Record of Evidence, vol. 1, pages 190 to 193.

GEO. FISHER, *Sec'y.*

Pio Pico, vocal decano de la Asamblea Departamental y Gobernador provicional de las Californias.

{ Gobierno de Dep'to } Por cuanto Dn. Ernesto Rufus, ciudadano Mej-
[Place of the eagle.] icanos por naturalization, ha pretendido para su
de Californias. } beneficio personal el parage nombrado rancho de German en las fronteras de Sonoma, al norte de este departamento y mas arriba del establecimiento de Ross que ocuparon los

Rusos practicadas previamente las averiguaciones consernientes mando de las facultades que me son conferidas a nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno declarando le la propiedad de el por las presentes letras de conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, a reserva de la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1o. Podra cercarlo sin perjudicar las travecias caminos y servidumbres lo disputara libre y esclusivamente destinando lo al uso y cultivo que mas le acomode.

2o. Solicitara del juez respectivo le de la posesion juridica en virtud de este despacho por el se demarcaron los linderos con las mojoneras necesarias.

3o. El terreno de que se le hace donacion es puramente el de cinco sitios de ganado mayor. El juez que lo posesion lo hara medio conforme a ordenanza, quedando el sobrante que resulte a la nacion para los usos que sean courenientes. En consecuencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en libro a que corresponda y se entregue al interesado para sue resguardo y demas fines. Dado en la ciudad de los Angeles en este papel comun por falta de sellado á ocho de Abril, de mil ochocientos cuarenta y seis.

PIO PICO.

Waspaso el derecho q. me esta conferido en el ariba titulo a favor de Carlos Meyer y Guillermo Bennet, y para la constancia dorneo el presente hay dia ocho de Junio, de 1849.

ERNESTO RUFUS.

Testigos: WM. MENTIE, *L. H. D. C.*

Opinion by Com'r Thornton.

CHARLES MEYER et al., assignees,	} No. 199. German.—Opinion by
vs.	
THE UNITED STATES.	
	Commissioner Thornton, and
	decree of final confirmation.

The claim presented in this case is founded upon a grant made on the 8th of April, 1846, under and by virtue of the decree of the Mexican Congress of the 18th of August, 1824, and of the executive ordinance of the 21st of November, 1828, by Pio Pico, governor of California, to Ernest Rufus, whose interest therein was transferred to the present claimants by various mesne conveyances. This grant is for five leagues of land, and was approved by the departmental assembly on the 10th of June, 1846. The occupation of the land was had and peaceably enjoyed by the grantee prior to the issuance of the grant, and from thence to this time, by him and those claiming under him. The genuineness of the grant and the authority of the grantor, as well as the other facts above reci-

ted, are fully established by regularly authenticated documentary evidence from the public archives of the former governments of the county, and by other testimony on file in the case. It is apparent that the land is within the ten littoral leagues, and there is no evidence of any measurement of the track or delivery of possession thereof by any judicial officer of the former government. The objections founded on the last recited facts, and all others urged against the validity of the claim, have been already fully considered by this board and overruled in the case of Cruz Cervantes, No. 56, the opinion in which is on file in the office of the secretary of this commission. In view of all which, and in accordance with the principles of decision prescribed to this board by the act of the 3d of March, 1851, organizing the same, we declare the claim to be valid, and that it ought to be confirmed to the claimants. Commissioner Hall concurs in the result thus announced. Whereupon we now make the following decree of final confirmation, viz.

HARRY J. THORNTON.

Decree of Final Confirmation.

This board, upon full consideration of the various grounds affecting the validity of the said claim, having come to the conclusion that the same is valid, therefore now proceeds to *mak*, and does hereby make the following decree or report of final confirmation, viz: It is decreed that the said claim be confirmed to the claimants to the extent and quantity of five (5) square leagues, or sitios de ganado mayor, and for no more, being the same land described in the grant and expediente referred to therein, and of which possession was proved to have been held and enjoyed under the said grant: Provided, that the said quantity of land granted and now here confirmed be contained within the boundaries called for in the said grant; and if there be less than the said above named quantity within the said bounds, then we confirm to the claimant that less quantity, it being apparent that said quantity exceeds the minimum of two hundred varas, as prescribed by the ordinance of 21st November, 1828.

HILAND. HALL,
HARRY J. THORNTON,
Commissioners.

Filed in office December 23d, 1852.

(Signed)

GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal' a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California,

do hereby certify the foregoing twenty-six pages, numbered from 1 to 26, both inclusive, to contain a true, correct and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, case No. 199 on the docket of the said board, wherein Charles Mayer et al. are the claimants, against the United States, for the place known by the name of Rancho De German.

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office) at San Francisco, California, this twenty-third day of February, A. D. 1854, and of the independence of the United States of America the seventy-eighth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Endorsed: Filed Feb. 23, 1854.

JOHN A. MONROE, *Clerk.**Notice of Appeal.*

ATTORNEY GENERAL'S OFFICE, 15th July, 1854.

CHARLES MYER et al., Claimants, }
 vs. } 199.
 THE UNITED STATES.

You will please take notice, that an appeal in the above case (a transcript of the proceedings in which was received at this office on the 15th of March, 1854,) from the decision of the commissioners to ascertain and settle the private land claims in the State of California, to the district court of the United States for the northern district of California, will be prosecuted by the United States.

C. CUSHING,
Attorney General U. S.

Endorsed: Filed Aug. 21, 1854.

JOHN A. MONROE, *Clerk.**Petition.*

To the honorable District Court of the United States in and for
 the northern district of California.

THE UNITED STATES, Appellants, }
 vs. } No. 15.
 CHA'S MEYER et al.

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the day of ; that a notice of appeal was filed on the

day of ; and that the land claimed lies in the said district; that the said claim is invalid: Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid. Respectfully, &c.,

A. GLASSELL,
Ass't U. S. Att'y.

Endorsed: Filed June 20, 1855.

JOHN A. MONROE, *Clerk.*

Answer.

District Court of the United States, northern district of California.

THE UNITED STATES	}	No. 15. (L. C. Docket No. 199.)
vs.		
CHARLES MEYER.		

Charles Meyer, the appellee and claimant in the above entitled cause, in answer to the petition therein filed, avers and says that his title to the land therein claimed is valid.

He therefore prays that the decision of the board of land commissioners be affirmed, and the title of the said claimant be decreed to be valid.

J. CLARKE,
Att'y for Claimant.

Endorsed: Filed June 27, 1855.

JOHN A. MONROE, *Clerk.*

Opinion delivered by the Hon. M. H. McAllister, Circuit Judge.

District Court United States for the northern district of California.

THE UNITED STATES, Appellants,	}
vs.	
CHARLES MEYER, WILLIAM BENNETZ,	
CARLOS T. GLEIN, HAND, AND	
— DUNCAN, Appellees.	

On the 8th April, 1846, a grant was issued, in conformity with the colonization law of Mexico of 18th August, 1824, and the general regulations of November 21, 1828, to one Ernesto Rufus, by Governor Pio Pico, by which the location called "Rancho de German," in the frontier of Sonoma, at the north of the department, and above the establishment of Russ, was granted to the said Rufus on the 2d day of June, 1846; the grant was approved by the departmental assembly.

Among the usual conditions annexed to the Mexican grants the following was attached to the one in question:

"The tract of land granted in an area of five square leagues, (sitios de ganado mayor;) the judge who shall give possession of it shall have it measured conformable to ordinances, leaving the surplus that may result to the nation for convenient purposes."

The genuineness of the grant, and the authority of the grantor,

are authenticated by documentary evidence from the public archives.

Indeed, as the case, like many others, *have* been submitted by the district attorney United States, with the understanding that where no objection is made to the genuineness of the signatures to the grant, the production of the original in this court is dispensed with, the authenticity of the documentary title in this case may be considered as established. The grantee in this case, Ernest Rufus, is the only witness sworn. He proves his having taken out the grant; proves the expediente on file to be a correct copy of the original, having previously compared them; states that he was in possession of the land prior to the issuance of the grant to him, and that he continued in possession until 1849, when he sold the rancho to the appellees.

This witness also states that he built a dwelling-house and several Indian habitations within one year from the date of the grant; that he built a mill on the land, which was completed within fifteen months from that date, and that he cultivated about forty acres of the land in grain, besides having cattle on it; and that appellees went into possession of the land at the time they purchased, and remain in possession at the present time.

Under the testimony, a full compliance with the conditions of the grant, with the single exception of not having obtained judicial possession, is established. The witness stated he applied to the alcalde of Sonoma for judicial possession, who postponed giving it, on the ground that he had other lands to survey in that vicinity, when he would comply with the wishes of witness; but the American war breaking out, the alcalde resigned, and witness was not able to obtain the judicial possession. Under the decisions previously made by this court, the failure to obtain such possession cannot, under the circumstances of this case, operate to invalidate the claim. The remaining objection is, that the land granted is situate within ten leagues of the seashore; upon this point the doctrine enunciated in the case of the United States vs. Cervantes must be decreed the settled rule of this court until reversed by a higher tribunal. The decision of the commissioners in favor of this claim must be therefore affirmed.

Decree.

In the District Court of the United States for the northern district of California.

THE UNITED STATES	} No. 15.—Decree. Stated term, September 10th, 1855.
vs.	
CHARLES MEYER et al.	}

Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause came on to be heard at a stated term of this court, on appeal from the final decision of the commissioners to ascertain

and settle private land claims in the State of California, under the act of Congress approved 3d March, 1851, upon the transcript of the proceedings and decision, and the papers and evidence on which said decision was founded; and it appearing to this court that said transcript has been duly filed according to law, and counsel for the respective parties having appeared, it is hereby ordered, adjudged, and decreed, that the decision of the said commissioners be hereby affirmed; and it is further hereby ordered, adjudged, and decreed, that the claim of the appellees be confirmed to them to the extent and quantity of five (5) square leagues and no more, being the same land described in the grant and expediente filed herein, and of which possession was proved to have been held and enjoyed under said grant: Provided said quantity of land be contained within the boundaries called for in said grant; and if there be less than the said above named quantity within the said boundaries, then said less quantity is hereby ordered, adjudged, and decreed to the said appellees.

M. HALL McALLISTER,
Judge Cir. Court U. S. for dist's of Cal'a.
 OGDEN HOFFMAN, JR.,
U. S. Dist. Judge.

Endorsed: Filed September 10th, 1855

JOHN A. MONROE, *Clerk.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the courtroom, in the city of San Francisco, on Tuesday, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-seven: present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES	}	D. C. 15.—L. C. 199.
vs.		
CHARLES MEYER et al.		

In this case, on application of the United States attorney, made in open court, it is ordered by the court that an appeal in behalf of the United States, from the final decision of this court, rendered at the present term, be and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States, without delay.

Endorsed: Filed March 24th, 1857.

JOHN A. MONROE, *Clerk.*
 By W. H. CHEVERS, *Deputy.*

[REC. CCLVII, D. T., 1857.]—3

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from one to thirty inclusive, contain a full, true, and correct transcript of the record on file, from the board of land commissioners, together with the pleadings, depositions, orders, opinion and decree, filed in this office in the case entitled The United States, appellants, vs. Charles Meyer et als., appellees.

In testimony whereof, I have hereunto set my hand and affixed [L. s.] the seal of said court, this 4th day of November, A. D. 1857, and of the independence of the United States of America the 82d.

JNO. A. MONROE, *Clerk*.

Filed 5th March, 1858.

SUPREME COURT OF THE UNITED STATES.

No. ~~259~~ 146.

THE UNITED STATES, APPELLANTS,

VS.

WILLIAM BENNITZ.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington, D. C.

SUPREME COURT OF THE UNITED STATES.

No. 259.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM BENNITZ.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

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GIDEON, Print.

Transcript of the proceedings in case No. 626—William Bennitz, claimant, vs. The United States, defendant—for the place named Breisgan.

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this 24th day of February, A. D. one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of William Bennitz, for the place named "Breisgan," was presented, and ordered to be filed and docketed with No. 626, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *September 3d*, 1853.

In case No. 626, William Bennitz, for the place named "Breisgan," the deposition of J. J. Warner, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, with document marked No. 1, A. F., annexed thereto, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *Sept. 25*, 1854.

Case No. 626 was submitted without argument.

SAN FRANCISCO, *September 26th*, 1854.

In the same case, Commissioner S. B. Farwell delivered the opinion of the board, rejecting the claim.

(Vide page of this Transcript.)

And the following order was made, to wit:

(Vide page of this Transcript.)

Petition.

To the Board of Land Commission for the ascertaining and settling of private land claims in California:

The petition of William Bennitz respectfully represents to your honorable board, that having been for a long time in the military service of California, from the year 1840, and not having received any recompensation for it, he made and presented his petition in

[REC. CCLIX, D. T., 1857.]—1

writing to Governor Micheltorena on the 18th June, 1844, soliciting for himself the tract of land hereafter described.

That said governor referred the subject to the secretary of the department, who referred it for further report to John A. Sutter.

That said Sutter, on the 16th July, 1844, reported in favor of your *petition*. That said governor thereupon, on the 26th day of July, 1844, granted your petitioner provisionally the occupancy of said land, promising at the same time to inspect said land personally, and then to execute the formal title-papers.

And your petitioner further saith, that said Micheltorena never came to those parts of the country where your petitioner's land is situated, and therefore did not execute a grant to him; but that your petitioner has, from said year 1844, been in the quiet and peaceable possession of said land, without becoming aware of the existence of any title conflicting with, or superior to his own.

And your petitioner further saith, that said land is situated in the present county of Shasta, on the east shore of the Sacramento river, is known by the name of "Breisgan," and bounded as follows: commencing at a point on the eastern shore of the Sacramento river, half a league south of the junction of the Arroyo de los Eresnos with the Sacramento; thence following the eastern shore of said Sacramento, about two leagues south to the most northern point of an island formed by said Sacramento; thence along the western line of said island to its most southern point; thence at right angles due east one league and a half; thence at right angles north to a point due east of the point of commencement; thence west to the place of beginning, containing altogether five Spanish square leagues, more or less; and your petitioner further saith, that the documents above referred to are herewith submitted to your hon. body's inspection.

Your petitioner therefore claims to be the owner of said land, and prays that your hon. body will confirm and validate his claim and title thereto.

CLARK, TAYLOR & BECKH,

Att'ys for Bennitz.

Filed in office Feb'y 24th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in vol. 1 of Petitions, on pages 624, 625.

GEO. FISHER, *Sec'y.*

Deposition of J. J. Warner.

No. 626.

OFFICE OF COMMISSIONERS OF LAND CLAIMS IN CALIFORNIA.

This day before Com'r Alpheus Felch came J. J. Warner, a witness in behalf of claimant, Wm. Bennitz, No. 626, who, after being duly sworn, deposed as follows:

Questions by Mr. Clark, Att'y for Claimant.

1st question. What is your name, age, and place of business?

Answer. My name is J. J. Warner; my age forty-five years; and I reside at San Diego, in the State of California.

2d question. Look upon the document now here presented to you, marked Exhibit No. 1, with the initials A. F., purporting to be a petition for a grant of land to Governor Micheltorena, and signed by Guillermo Bennitz, with other documents on the same sheet of paper attached to this deposition, and say what you know of the genuineness of the signatures appearing on said document?

Answer. I have looked on the document; I am acquainted with the signatures of Manuel Micheltorena and Manuel Jimeno, and have seen them write; their signatures, each appearing in two several places on said document, I believe to be their true and genuine signatures respectively; I believe the signature appearing thereon as that of J. A. Sutter to be the true and genuine signature of John A. Sutter; I have correspondence with said Sutter, and written to him, and received answers from him, and believe this to be his signature; I do not remember of ever having seen him write.

Mr. Greenhow objects to this statement in regard to Mr. Sutter's signature, as incompetent proof.

J. J. WARNER.

Mr. Greenhow, associate law agent, was present at the taking of this deposition, but propounded no interrogations to the witness.

Subscribed and sworn to before me, at San Francisco, this third day of September, A. D. 1853.

ALPHEUS FELCH, *Commissioner.*

Filed in office Sept. 3d, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 3, p. 132.

GEO. FISHER, *Sec'y.*

[*Here follows map—original, page 6.*]

Exhibit No. 1, A. F., with map, annexed to Depo. of J. J. Warner.

Sello Cuarto—Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

Ex'mo S'or Gobernador:

Guillermo Bennitz, nativo de Allemania, ante V. E. con el mas propuedo respeto se presenta y espone que siendo naturalizado Me-

jicano, y desendo de di carse a la agricultura suplica a V. E. se di que concederle el terreno conocido con el nombre de Bresiguan, cuyo paraje es valdio consta de cinco sitios de ganado mayor, y son sus linderos al N. al E. q'al S. la sierra y al O. el Rio Sacramento, segun manifiesto el diseño que debidamente acompaña.

B. I. A. V. E. mega se de que a ceder a esta su peticion y recevire merced.

Junalo necesario, D. D. Monterey, Junio 18, de 1844.

GUILLERMO BENNITZ.

MONTEREY, *Junio 18, de 1844.*

Informe el S. s'rio del departm'to tomando providamente los qe. puedan resultar.

MICHELTORENA.

Dispone el E. S. gobernador, pase esta instancia al S'or Sutter, para que lo sirva informar sobre su contenido.

F'ha la misma.

MANUEL JIMENO.

El terreno que solicita el Sr. Dn. Guillermo Bennitz, esta en este pedimiento y que es representado en el adjunto deseño esta desocupado, y do esta certificacion para los fines que le conveynan.

J. A. SUTTER.

Nueva Helvetia, Julio 16, de 1844.

Translation of Exhibit No. 1, A. F., with map, annexed to the Depo. of J. J. Warner.

Fourth Stamp—Two Reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years eighteen hundred and forty-four and eighteen hundred and forty-five.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

Most Excellent Governor:

Guillermo Bennitz, a native of Germany, before your excellency, with the most profound respect, appears and says that, being a Mexican by naturalization, and wishing to dedicate himself to agriculture, he asks of your excellency that you be pleased to grant to him the land known by the name of "Breinguan," which place is vacant, and contains five square leagues of land, (sitios de ganado mayor,) the boundaries of which are, to the northeast and south the (sierra) mountains; to the west, the Sacramento river, as explained in the sketch which I annex.

Therefore I beg of your excellency, that you accede to this petition, in which I shall receive a favor.

I swear, as necessary, &c.

Monterey, June 18, 1844.

(Signed)

GUILLERMO BENNITZ.

(Marginal note.)

MONTEREY, *June* 18, 1844.

Let the secretary of despatch report, taking previously others.
(Signed) MICHELTORENA.

His excellency the governor orders that this petition pass to
Señor Sutter, that he may report thereon. Date the same as above.
(Signed) MANUEL JIMENO.

The land solicited by Don Guillermo Bennitz in this petition,
and which is represented on the annexed sketch, is unoccupied,
and I give this certificate for whatever purposes that be of *intot* the
party.

New Helvetia, July 16th, 1844.

(Signed)

J. A. SUTTER.

Most Excellent Governor:

To many petitions like the present a note has been put, that
they must wait until your excellency makes a visit about the rivers
Sacramento and San Joaquin, and as there is no general maps of
those lands the grants asked for cannot be made with certainty; so
if your excellency should think fit, this expediente may be detained
until these petitions referred to are disposed of.

Monterey, July 26th, 1844.

(Signed)

MANUEL JIMENO.

MONTEREY, date the same.

Let him occupy it provisionally until I go up to conclude it.
MICHELTORENA.

Opinion.

WILLIAM BENNITZ }
vs. } No. 626.
THE UNITED STATES. }

Claim for a place called Bonisgan, in the county of Shasta, and con-
taining five square leagues.

In this case the petitioner has placed on file an application made
by him to Governor Micheltorena, on the 18th day of June, 1844,
and states in his petition that the same was referred to John Sutter
for his opinion, and that on the 16th day of July, 1844, the said
Sutter reported in favor of the issue of a grant, and the signatures
of the said Micheltorena and the said Sutter being satisfactorily
established by proof.

Here the proceeding on the part of the petitioner ends.

The board are of opinion that no sufficient proofs have been
offered to entitle the said petitioner to a confirmation, and that the
same should be rejected. Rejected.

Filed in office Sept. 27th, 1854.

GEO. FISHER, *Sec'y*

Decree.

WILLIAM BENNITZ }
 vs. } No. 626.—Bonesgan.
 THE UNITED STATES. }

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is invalid, and it is therefore decreed that the application for a confirmation be denied.

ALPHEUS FELCH,
 R. AUG. THOMPSON,
 S. B. FARWELL,
Commissioners.

Filed in office Sept. 27th, 1854.

GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and the *decession* in this case, and the papers and evidence upon which the same are founded, be made out and certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern judicial district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twelve pages, numbered from 1 to 12, both inclusive, to contain a true and full transcript of the record of the proceedings, and of the *decession* of the said board of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 626 on the docket of the said board, wherein William Bennitz is the claimant against the United States for the place known by the name of "Breisgan."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this twentieth day of June, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Endorsed: Filed June 20, 1855.

JNO. A. MONROE, *Clerk.*

Notice of Appeal.

Case No. 626.—On appeal from the Board of U. S. Land Commission.

WM. BURRITE, Appellant,
vs.
THE UNITED STATES, Appellee. } Claim for "Breisgan."

SIR: Please to take notice that the claimant in the above case will prosecute the appeal therein.

Yours, respectfully,
CLARKE, TAYLOR, & BEEKH,
Att'ys for Claimant.

San Francisco, May 9th, 1855.

To the CLERK OF THE U. S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Filed May 9th, 1855.

JNO. A. MONROE, *Clerk.*

Petition.

To the honorable District Court of the United States in and for the northern district of California.

WM. BENNITZ, Appellant, }
vs. } No. 194.—(L. C. Docket No. 626.)
THE UNITED STATES. }

Your petitioner, Wm. Bennitz, respectfully shows, that heretofore, viz., on the 24th day of February, A. D. 1853, he filed before the United States board of land commissioners for California a petition for the confirmation of his claim to a tract of land situate in the northern district of California, viz., in the county of Shasta, for a description of which land, and the title of your petitioner, reference is hereby made to said petition.

That, after hearing said petition, with the proofs and argument of counsel in the case, the said board, on the 26th day of September, A. D. 1854, rejected said claim as invalid; that on the 20th day of June, 1855, a transcript of the record of said case was filed in this court, by virtue whereof, and by force of the statute in that case made and provided, an appeal to this court was duly effected. That on the 9th day of May, 1855, your petitioner filed in this court a notice of his intention to prosecute said appeal.

Your petitioner therefore prays that the decision of said board may be reversed, and that this court may confirm his title to the said land.

Respectfully,

J. CLARK,
Att'y for Claimant.

Filed June 30th, 1855.

JNO. A. MONROE, *Clerk.*

Answer.

In the District Court of the United States, for the northern district of California.

THE UNITED STATES, Appellees, }
 vs. } Case No. 194.
 WILLIAM BERRITZ.

The United States, by their attorney, deny the validity of the title set out in the petition of the said appellants; and pray that the decision of the board of commissioners be affirmed, and that the said title be decreed to be invalid.

WM. BLANDING,
Dist. Att'y.

Filed June 30th, 1855.

JNO. A. MONROE, *Clerk.*

Deposition of Jno. Yates.

No. 194.—Claim of Wm. Bennitz to five leagues of land, called Breisgar.

United States District Court, northern district of California.

SAN FRANCISCO, *August 31st, 1855.*

On this day, before me, Geo. Pen Johnston, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John Yates, a witness produced on behalf of the claimant and appellant, in case No. 194, by an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 626 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, J. Clark, counsel for appellant, and
 A. Glassell, “ “ U. S., acting U. S. district attorney.

Question by Claimant.

1st. What is your name, age, and place of residence?

Ans. 1st. My name is John Yates, age 49, and place of residence San Francisco.

Quest. 2d. Are you acquainted with the claimant in this case; and if so, how long have you known him?

Ans'r 2d. I have known him ever since the year 1843, at which time I took him up to Sutter's fort, called New Helvetia; I being in the employ of Captain Sutter, and he being about to engage also in the employ of said Sutter.

Quest'n 3d. State if you are acquainted with the land claimed in this case.

Ans'r 3d. I have examined the papers on file in the office of the board of land commissioners, and recognise the tract of land de-

lineated upon the map of Bennitz filed among the papers. The island there delineated is called Bloody island, from a fight which occurred there between Capt. Sutter and the Indians. The tract is on the east side of the Sacramento river, opposite the land claimed and formerly occupied by Pearson B. Reading.

Question 4th. State what you know of any occupation of the premises by or on account of the claimant Bennitz.

Answer 4th. In the latter part of March, 1845, a French Canadian, by the name of Julian, whom I had known for a considerable time, proposed to me to join him in making a settlement for Bennitz on the premises herein claimed, representing that Bennitz would give a portion of the land for making the settlement; I acceded to his proposition, and we immediately proceeded to make the settlement; we first erected a tent, and planted about an acre in cane; we took with us seeds of various kinds from Sutter's fort; shortly after our arrival we commenced the erection of a substantial wooden building; before the building was finished, when I had been there only some twelve days, the Indians became so troublesome, and, as I thought, so dangerous, that I left the place; Julian remained upon the place, and, as I learned some six months after, was shot by an Indian; after I returned to Sutter's fort, I told Bennitz of the improvements we had made, and my reasons for leaving; I have often heard Bennitz speak of the land as his from that time to this.

Cross-examination by A. Glassell, Assistant U. S. Attorney.

Question. Have you any interest, direct or indirect, in the event of the confirmation of this claim?

Answer. I have none whatever.

JNO. YATES.

Sworn to and subscribed before me, this 31st day of August, A. D. 1850.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Filed August 31, 1855.

JNO. A. MONROE, *Clerk.*

Translation of Gen'l Grant.

Translation of the General Grant.

Manuel Micheltoarena, General of Brigade of the Mexican army, Adjutant General of the staff, Governor, *Command* General and Inspector of the Department of the Californias.

Not being able now, on account of being closely occupied this supreme departmental government, to extend one by one the respective titles to all the citizens who have petitioned for lands, with a
[REC. CCLIX, D. T. 1857.]—2

favorable information from Señor Don Augustus Sutter, captain, and judge in charge of the jurisdiction of New Helvetia and Sacramento, I, in the name of the Mexican nation, by these letters confer upon them and their families the lands described in their applications and maps, to all and each one of them who has solicited and obtained favorable information from said Señor Sutter up to the day of this date, so that no one can dispute their title. Señor Sutter will give them a copy of this, in furtherance of a formal title, with which they will present themselves to this government, to extend the same title in the proper form, and upon corresponding sealed paper; and for the establishment of which fact, for all time, I give this document, which will be known and acknowledged by all the civil and military authorities of the Mexican nation in this and the other departments.

Duly authenticated with the seal of the government, and the military seal, in Monterey, the 22d of December, 1844.

(Signed) MAN'L MICHELTORENA.

I certify the above as a true copy.

New Helvetia.

J. A. SUTTER.

Filed in office April 27th, 1852.

(Signed)

GEO. FISHER, *Sec'y.*

Gen'l Grant.

This original exhibited by Captain Sutter, and proved before me.

May 13, 1852.

J. W.

Manuel Micheltorena, G'ral de Brigada del Ejército Mejicano Ayudante G'ral de la Plana Mayor del mismo, Gobernador, Comand'te G'ral y Inspector del Departam'to de Californias.

No pudiendo por ahora por estar sumamente ocupado este gobierno supremo departamental, estender uno por uno los titulos respectivos á todas los ciudadanos, que han solicitado terrenos con informe á su favor del S'or D. Augusto Sutter, capitan y juez encargado de la jurisdiccion de Nueva Elvecia y Sacramento á nombre de la nacion Mejicana les confiero por estras letras la propiedad pa. ellos y sus familias de los respectivos terrenos marcados en sus instanceas y diseños a todas y á cada uno de los q. hallan solicitado y obtenedo informe favorable del espresado. S'or Sutter h'ta hoy dia de la f'ha, sin que; nadie pueda desputarles su propiedad serviendoles una copia de este que les dará mas adelante el S. Souter de titulo formal con el q. se presentaran á este gobierno pa. estenderles el mismo titulo en la debida forma y papel sellado correspondiente y pa. la debido constancia en todos tiempos doy este documento que. Serra reconocido y acatado por todas las autoridades civiles y militares de la nacion Mejicana ni este y en los demas de-

partamentos autorizado debidamente con los sellos militar y de gobierno en Monterey á veinte y dos de Diciembre de mil ochocientos cuarenta y cuatro.

MAN'L MICHELT'A.

STATE OF CALIFORNIA,
Sacramento County, ss.

On the 28th day of June, A. D. 1850, I, Lewis A. Birdsall, hereby certify that John Bidwell, Samuel J. Hensley, George McKinstry, and Isaac T. Mott, severally came before me, and being duly sworn by me, and being all credible witnesses, depose and say, on oath, that they know Micheltorena, the above named grantor, and are well acquainted with his written signature, having seen him write; and that they verily believe that he signed the above with his own hand.

In witness whereof, I, Lewis A. Birdsall, recorder in and for the
[L. S.] county of Sacramento and State of California aforesaid,
have set my hand and seal the day and year above written.

L. A. BIRDSALL,
Recorder Sac. Co., California.

H. E. Robinson. Filed for record June 28th, 1850, at 10 o'clock a. m., and duly recorded in book D of deeds, page 140.

LEWIS A. BIRDSALL,
Recorder Sac. Co., Cal.
Per TH. J. ALEY, *Dep'ty.*

John Bidwell. This paper proved by the testimony of John Bidwell before me, April 16th, 1852.

H. HALL, *Com'r.*

I, George Fisher, secretary to the U. S. land commission to ascertain and settle private *private* land claims in the State of California, hereby certify the foregoing to be a true and correct copy of a Spanish document in case No. 201, Sam'l J. Hensley vs. The United States, for Aguas Nieves, now on file in this office.

In testimony whereof, I have hereunto signed my name officially this 6th day of July, A. D. 1855.

GEO. FISHER.

It is hereby stipulated that the foregoing certified copy of the original grant, filed in case No. 201, before the U. S. board of land commissioners for California, with the translations hereunto annexed, be admitted in evidence, as duly proved in the suit William Bennett vs. The U. States, No. 194, in the dist. court northern dist. of California.

A. GLASSELL, *Ass't U. S. Att'y.*

Filed August 31, 1855.

JOHN A. MONROE, *Clerk.*

Deposition of Adolph Brenheim.

United States District Court, northern district of California.

SAN FRANCISCO, *October 4th, A. D. 1855.*

On this day, before me, Geo. Pen Johnston, commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Adolph Brenheim, a witness produced on behalf of the appellant, in case No. 194, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 626 on the docket of the said board of commissioners, and was duly sworn, and testified as follows :

WILLIAM BENITZ }
vs. }
THE UNITED STATES. }

Present, J. Clarke, for appellant; A. Glassell on behalf of the U. S.

Questions by J. Clarke, Esq.

What is your name, age, and how long have you been in California?

My name is Adolph Brenheim; I am thirty-four years of age; and came to California in the summer of 1842, and went to reside at Sutter's fort in August of that year.

Do you know the place or ranch claimed, and do you know Wm. Benitz?

I know both.

What do you know of the occupation or improvement of the ranch claimed by Wm. Benitz?

In the year 1845 a man by the name of Julien, a Canadian Frenchman, was in possession of the land, and held it for the claimant Benitz. He had it under cultivation—raised wheat, corn, watermelons, &c.; he had a home there, and was living in it with his wife. I had several conversations with Julien, and he always told me that he held the land for Benitz. Julien was killed by the Rogue River Indians in 1846.

What do you know about Benitz having located on the said ranch originally?

I was up there the year before—saw the place—thought it a good one, and recommended it. Benitz took the proper steps, and obtained a title.

Cross-examination by Counsel for U. S.

Do you know anything of the ranch in question since 1846?

No.

When was the last time you saw the ranch?

I saw it last in 1845, in November.

When was the first time you ever saw the ranch?

I saw it in 1844, in the spring; the lands then belonged to the government of the country.

How long was Julien on that ranch?

To the best of my recollection, he was there fourteen or eighteen months.

Have you ever been in Julien's house?

I have been.

What sort of a house was it?

It was built of grass, sticks, tules, and willows.

How large was the house?

It was large enough for six or eight persons to live in; it had but one room.

How do you know that Benitz had a grant of that ranch?

He got it from Micheltorena at the time war was declared against Castro and Pico. Any one who joined Micheltorena in that war was to have a grant of land, according to Micheltorena's proclamation. Benitz Partrico Rufus did join Micheltorena, and Benitz also; but Benitz and Rufus both could not leave at the same time—Rufus went with Micheltorena, and Benitz was at Fort Ross. I don't know anything more about Benitz's grant than what I have already testified. I have no interest in this ranch.

When did Julien tell you that he occupied the ranch for Benitz?

He told me twice in 1845.

Do you know whether any person occupied the land after Julien left?

I cannot say, or I don't know whether they did or not.

ADOLPH BRENHEIM.

Sworn to and subscribed before me, this 4th day of October, A. D. 1855.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Filed Oct. 4th, 1855.

JNO. A. MONROE, *Clerk.*

Deposition of E. Rufus.

United States District Court, northern district of California.

SAN FRANCISCO, *Feb'y 28th, 1856.*

On this day, before me, W. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Ernest Rufus, a witness produced on behalf of the claimant in case No. 194, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 626 on the docket of the said board of commissioners, and was duly sworn and testified as follows: Present, A. Glassell, ass't U. S. district attorney, and J. Clarke, counsel for claimant.

Questions by Counsel for Claimant.

Are you acquainted with the claimant in this case; and if so, how long have you known him?

Answer. I am, and have known him for fifteen years. I know he applied to Micheltorena, in 1844, for a tract of land in the upper part of the Sacramento.

Question 2d. State if you have seen the original papers on file in the office of the board of U. S. land commissions for California, in case No. 626, wherein William Bennitz is claimant, consisting of the petition of said Bennitz to Micheltorena for the tract of land called "Breisgan," the report of Capt. John A. Sutter and Secretary Jimeno, the provisional grant of Governor Micheltorena, and the map of the premises.

Answer. I have seen the above described papers; I saw them in 1845, and they were then just as they are now. I saw Bennitz when he was making the map in the latter part of 1843, or the early part of 1844. About the time he was making said map he did not know what to call the land; Capt. Sutter told him that as he, Bennitz, was from Breisgan, in Germany, he had better give it that name, which he did.

Question 3d. State whether you have examined the signatures of Bennitz, Jueno, Micheltorena, and Capt. Sutter, to said documents; and if yea, state whether or not they are in their own proper and genuine handwriting.

Answer. I am well acquainted with the handwriting of each of the above named persons from having often seen them write, and their respective names as they appear on said documents are in their own handwriting.

Question 4th. State, if you know, whether Bennitz ever served in any military capacity under Micheltorena; and if yea, in what, and for what length of time?

Answer. During the space of six or eight months, in 1844, he served under Micheltorena as a member of the Sacramento Riflemen, in the campaign of Micheltorena against the native Californians, and during part of that time he served in the capacity of lieutenant.

Question 5th. State if you have ever heard Micheltorena speak of having made this grant to Bennitz; and if so, upon what occasions, and what he said.

Answer. In the rainy season in the latter part of 1844, I was in Monterey county, at either mission of Solidad or San Antonio, and Micheltorena was there, also Capt. Sutter, in command of the Sacramento Riflemen, composed in great part of foreigners and of the New Helvetian company. Micheltorena made a speech to the troops; he spoke of his own conduct and policy in the contest between the Mexican nation and the native Californians, and spoke of the policy of the Mexican nation towards foreigners; that he had

come with greater powers than had been heretofore exercised by previous governors; that those who had previously applied for land, and to whom he had granted the right to occupy, now had their grants confirmed to them; and that others of foreign birth who were now serving under him, and would continue to do so, would be treated with like liberality, and that hereafter he would protect those settled in the frontier country of the Sacramento better than the Californians had done. Bennitz was present with his company. About a month after that, at San Luis Obispo, a party of our men brought in a prisoner, Miguel Abila. Micheltorena was very much pleased at this; asked who commanded the party that had taken Abila. He was told it was in charge of two men; the one I forget—the other was Bennitz. He then asked, is Bennitz the man who some time ago asked for land? and upon being told he was the identical person, he said, tell him his land has been confirmed to him. At that time I commanded the Indian company, and Capt. Sutter was the commander-in-chief of the two companies.

Question 6th. State what you know about Bennitz having occupied or claimed the land in question, to wit, "Breisgan."

Answer. In 1844, or 1845, he sent a Frenchman named Julio on the place, with cattle and horses, to settle on and occupy the land. Afterwards Julio came down to Sutter's fort for supplies. That is all I know about the occupation of the land. I heard he was afterwards killed by the Indians, and his house on the premises by them burned down. I know that Bennitz has continued to claim the land.

Cross-examined by the U. S. Dist. Attorney.

1st question. What has been your occupation from 1844 up to this time?

Answer. In the year 1844 I was an officer of Micheltorena's army, holding the position of lieutenant of the Nueva Helvetia company. In 1845 said company was disbanded; from that time to 1849, I was farming at Fort Ross, in Sonoma county. Up to 1851 I lived in Sonoma; then I went down to Los Angeles, and was there about two years; I then came to San Francisco and lived for a few months; then I went to Europe, and returned to this country in December, 1855, and have been in Sonoma ever since.

2d question. When did you see the papers above alluded to; for what purpose were they shown to you; how long did you have them before you?

Answer. I took them to Monterey in 1845, for Bennitz; I had them in my possession for the purpose of taking them to a man named Romé, and of getting him to either settle on or purchase a part of the land; Bennitz handed them to me at Fort Ross; I had them during my journey to Monterey, and delivered them to Romé; he was a German by birth and a sailor by occupation. About a

year after, I brought those same papers back to Fort Ross and delivered them to Bennitz.

3d question. Did you see Bennitz on the land before he made the map you speak of? If so, state particulars.

Answer. I did not; I don't remember that he ever told me he had been on the land.

4th question. Did you ever see any other grant of land that Bennitz had, or ever hear him say he had one?

Answer. I never did.

5th question. What are your means of knowing that Bennitz has continued to claim the land referred to?

Answer. He has always spoken to me, saying he would do so and so with the land. Think I have heard him speak to other persons on the subject, but do not recollect who they are.

ERNEST RUFUS.

Sworn to and subscribed before me, February 28, 1856.

W. H. CHEVERS,

U. S. Commissioner.

It is hereby stipulated, that the above deposition be considered in evidence as if taken before and read on the hearing.

J. CLARKE,

Att'y for Claimant.

A. GLASSELL,

Ass't U. S. Dist. Att'y.

February 29, 1856.

Filed February 28, 1856.

JNO. A. MONROE, *Clerk.*

Deposition of John A. Sutter.

District Court of the United States, northern district of California.

WILLIAM BENNITZ
vs.
THE UNITED STATES.

} Claim for the tract of land called Breisgan.

John A. Sutter, being duly sworn, deposes and says, that William Bennitz, claimant in the above entitled cause, was one of the persons who had petitioned Governor Micheltorena for land, in the year 1844, and upon whose petitions affiant had reported favorably to said governor, [and that said Bennitz was one of the persons to whom the general grant of said Micheltorena (in evidence in the case of Samuel J. Hensley, in this court,) applies, and in whose favor the said grant was intended to operate.]

J. A. SUTTER. [SEAL.]

Sworn to and subscribed before me, this first day of April, A. D. 1856.

E. DUPRÉ,

[SEAL.] *Notary Public in and for Yuba county, California.*

It is hereby stipulated, that the within deposition of John A. Sutter be considered in evidence in case No. 194, claim of William Bennitz vs. The United States. The district attorney, at the same time, excepts to the competency of so much of the foregoing affidavit as is included in brackets, on the ground that the same is a statement of a legal conclusion and opinion, and not a statement of facts.

April 3d, 1856.

A. GLASSELL,
Ass't U. S. Dist. Att'y.

Filed April 2d, 1856.

J. A. MONROE, *Clerk.*

Opinion.

THE UNITED STATES }
vs.
WILLIAM BENNITZ. }

The appellant in this case claims under the general grant by Governor Micheltorena, on the 22d December, 1844, which has already been considered and passed upon by this court in the case of S. J. Hensley.

It appears in evidence that the present claimant was one of those in whose favor Capt. Sutter had reported, and for whose benefit the general grant was made.

It further appears that the claimant in 1845 placed a tenant upon the land, by whom a portion of it was cultivated, and who continued to reside upon it until the summer or fall of 1846, when he was killed by the Indians.

There seems no reason to suppose that the claimant ever abandoned his grant, and under the ruling of this court in the case of Hensley, we think the claim should be affirmed.

April 5, 1856.

Decree of Confirmation.

WILLIAM BENNITZ }
vs. } Decree No. 194.—Stated term, April 7th,
THE UNITED STATES. } 1856.

Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause coming on this day to be heard upon appeal from the decision of the commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of proceedings and decision, and the papers and evidence on which said decision was founded, and the pleadings and evidence filed in this court; and it appearing to the court that said transcript was duly filed according to law, and counsel having been heard on the part of the United States, and for claimant, it is now considered, ordered, adjudged, and decreed by the court, that the said decision of the commis-

[REC. CCLIX, D. T., 1857.]—3

sioners is erroneous, and that the same should be and hereby is in all things reversed; and it is hereby further ordered, adjudged, and decreed that the claim of the said William Bennitz, appellant, to the tract of land called "Breisgan," is valid, and that the same should be and hereby is confirmed.

The land of which confirmation is hereby made is of the extent of five square leagues, and no more, and is the same tract the boundaries whereof are set forth in the petition of claimant to the governor, and which are delineated in the diseño, a copy of which is on file in the case.

OGDEN HOFFMAN, Jr.,
U. S. Dist. Judge.

Filed April 7th, 1856.

JNO. A. MONROE, *Clerk.*

Order.

At a stated term of the district court of the United States of America for the northern district of California, held at the courtroom, in the city of San Francisco, on Wednesday, the first day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES	}	D. C. 194.—L. C. 626.
vs.		
WILLIAM BENNITZ.		

In this case, on application of the U. S. attorney made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court rendered at the present term be and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court without delay.

Filed April 1st, 1857.

JOHN A. MONROE, *Clerk.*

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from one to thirty-four inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, opinions, and decree filed in this office, in the case entitled—

THE U. S., Appellant,	}
vs.	
WILLIAM BENNITZ, Claimant.	

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this fourth day of November, [SEAL.] one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

JNO. A. MONROE, *Clerk.*

Filed 5th March, 1858.

SUPREME COURT OF THE UNITED STATES.

No. 40.—DECEMBER TERM, 1858.

THE UNITED STATES, APPELLANT,

vs.

MICHAEL C. NYE.

The appellee claims four square leagues of land on the Sacramento river, the boundaries of which are clearly defined, and the premises are also so definitely laid down on the map referred to in the proceedings to obtain the grant, that there can be no difficulty about the location on the survey thereof.

The case is also free from all difficulty as to occupation by the claimant, who was the original grantee. The record shows, that in the fall of 1845 he lived on the place, in a house built by himself, and had five or six hundred head of cattle and tame horses upon it. He was subsequently driven away by the Indians, but under circumstances which preclude all idea of abandonment, and which establish a full justification. *Fremont vs. United States*, 17 How., 560 ; *United States vs. Reading*, 18 How., 1. (Record, 3, 4, 5, 6.)

The title of the claimant is derived from the Mexican authorities, under a grant familiarly known as the *general title*.

The proceedings to obtain the grant, duly proved to be genuine, are given in evidence and consist of the following :

1st. The petition of Nye to the governor for the grant, dated December 22, 1843.

2d. The decree of the governor, Micheltorena, ordering the secretary to take information and report, dated December 31, 1843.

3d. A reference, for information, by the secretary, Jimeno, to Capt. Sutter, commissioner of the frontier of the Sacramento, dated January 4, 1844.

5th. The report of Captain Sutter that the said land was unoccupied, &c., dated January 27, 1844.

GIDEON, Printer, 511 Ninth st., Washington, D. C.

These are followed by the document known as the *general title*, signed by Governor Micheltorena, dated December 22, 1844, the genuineness of which is established by the testimony of said Sutter. (Record, 11, 12, 15.) And it is also proved that a copy of said *general title*, duly certified, was delivered by said Sutter to the claimant on the 8th day of June, 1846. (Record, 10, 11.)

On the part of the appellee, it is insisted that the document designated the *general title* is, in legal effect, a *grant* by the constituted authorities, and that the claimant was one of the persons for whose benefit it was made, and by virtue of it was invested with a title to the premises claimed by him.

1. No doubt can exist of the power of Governor Micheltorena, at the time it bears date, to make the grant. The insurrectionary movement which subsequently compelled him to leave the department, and substituted Pio Pico in his place, without authority of law, was adverted to by this court in the recent case of *The United States vs. Cambuston*, 20 How., 59. Micheltorena continued to occupy his position as governor, and to exercise all its functions, until the spring or fore part of the summer of 1845. Although embarrassed by the opposition to his administration, made by the native California party, he exercised the full functions of the office until several months after this grant was made. *Ib.*

2. The document is a grant; not a mere promise to grant *in futuro*, but is itself a *grant in presenti*. The words are: "In the name of the Mexican nation, I *confer* on them and their families, by these letters, *the property of the respective tracts of land*," &c.; "and that it may be duly evidenced in all times, I give this document, which will be acknowledged and complied with by all authorities, civil and military, of the Mexican nation, in this and other departments," &c.

Stronger or more explicit language of grant could not be used.

Two objections were urged on the hearing of the case below, and mainly relied on to defeat this claim, namely: 1st, that no person is named in the document as grantee; and 2d, that the alleged grant was not delivered to the claimant under it.

As to the objection based on the want of grantees specified by name in the grant we reply:

1st. The law has nowhere rendered it indispensable that the name of the grantee should be inserted in a grant. Even under the technical rules of the common law—a rule far more strict and technical than that of the civil or the Spanish law—it is well settled that a deed or grant may be good without inserting the name of the grantee therein.

4 Bacon, Tit. Grant (C.)

It is true the parties are usually described by their christian and surnames, but this is not absolutely necessary. It is enough that the party can be identified and distinguished from all others.

2 Hilliard on Real Property, 350.

A conveyance is good where the grantee is described by sufficient terms to designate who is intended, though neither his christian nor surname is used.

Irwin vs. Longworth, 20 Ohio R., 581.

Thus a deed to the *wife* of a person without giving her name is good.

A grant to the *heir* of one deceased, or to the *oldest son* of A., without naming them, is good.

Conveyances are good in many cases when made to a grantee by a certain designation, without the mention of either the christian or surname.

4 Kent's Com., 510.

It is not essential to the validity of a grant that the grantee or grantees should be named; but if not named, they must be ascertained by description, so as to be distinguished from all others, and any uncertainty in this respect will render the grant void.

Thomas vs. Mansfield, 10 Pick., 376.

Shaw vs. Loud, 12 Mass. R., 447.

Hale vs. Leonard, 1 Pick. R., 27.

Davis vs. Hayden, 9 Mass. R., 514.

Cox vs. Beltzhoover, 11 Miss. R., 142.

Hoffman vs. Porter, 2 Brock., 156.

The cases above cited, as well as those of Scanlan vs. Wright, 13 Pick. R., 523, and Jackson vs. Root, 18 John. R., 60, show that the parties who are to take under such a grant may be ascertained by extrinsic evidence, and when thus ascertained, shall take the property in the same manner as though their names were inserted in the grant.

2d. The designation in this grant is explicit, and the persons intended as grantees certain.

They are described in the grant as "all the citizens who have solicited tracts of land, with reports in their favor, from Mr. Augustus Sutter, captain and judge, having in charge the jurisdiction of New Helvetia and Sacramento."

These applications were intended for lands situated in the jurisdiction of Capt. Sutter, for to no other was he the proper certifying officer, and were therefore only those who had asked lands in the Sacramento valley.

The identification of the persons intended as grantees was made doubly sure by restricting it, *first*, to the persons whose petitions for grants had already, anterior to that date, been presented to the governor; and *secondly*, to such of those petitioners as had, previous to that date, obtained favorable reports from Mr. Sutter. Both these qualifications were proved by written evidence. Every petition thus presented had already passed under the examination of the governor. Every one of them had received some official

action of his upon them, and contained his endorsement of that action according to universal custom. Every one of them could, therefore, be readily identified by the official act and signature of the governor himself, endorsed on the papers containing the proceedings in the case.

They were with equal facility identified by the report of Captain Sutter. This must constitute a part of the *expediente* to bring a petitioner within the terms of the grant, describing the grantee. This report was also official in its character, and being in writing, and constituting a part of the documentary evidence of the proceedings in the case, was liable to no mistake or misapprehension.

As a class the grantees intended in the *general title* were well known. Micheltorena came from Mexico a stranger to California when he entered on his duties as governor, and it is a matter historically well known, and fully proved by the archives, that he declined making grants to the petitioners in the Sacramento valley until he could obtain further information, with a map of the country, &c., and that he intended making a visit of personal inspection. He therefore deferred final action for some time on all such petitions, allowing the parties, when they desired it, to go into possession, but suspending, temporarily, the proceedings for subsequent action. Insurrectionary troubles compelled him to relinquish his intended visit, and then he decided to perfect the title solicited, and issued the *general grant* in favor of the petitioners. The testimony of Captain Sutter shows that these petitioners for grants in the Sacramento valley were well known to the governor as meritorious applicants, and that the grant was issued at his personal solicitation, and was forwarded by courier to him for the benefit of the persons in whose favor it was made.

3d. The record shows that the claimant Nye was one of the persons described in the grant. His petition was presented to the governor, as is proved by the decree of that functionary written thereon and signed by him, and by the further official action of the secretary of the government also endorsed thereon; and it moreover contains the favorable report of Captain Sutter in reference to the grant. He was designated and treated as one of the grantees by Captain Sutter, in giving to him a copy of the document of the *general title*, according to the terms of the grant, in evidence of the right of the claimant under it as one of the grantees. This copy was given before the Mexican authority was broken by the ingress of American forces, to wit, June 8, 1846, and while Captain Sutter still held his official position under the government.

He is, therefore, brought by the record clearly within the description in the grant, and has always been recognised as one of the grantees.

Second. As to the delivery of the grant.

The general rule is that a grant by the government is good without the delivery of any formal document of title to the grantee. The Spanish grants in Louisiana and Florida have been held not to require such delivery as a requisite to their validity. The original, the *protocol*, was retained in the public office; an official copy was usually delivered to the grantee as his evidence of title; and this would be so under the Mexican jurisdiction but for the 8th and 9th articles of the regulations of 1828, which require the final document of title to be delivered to the grantee, and a record of it to be kept in the government office.

This document was not intended as the final document of title. The approval of the departmental assembly was needed before that title could be issued. Very few titles in California had this requisite; although containing plain and unequivocal words of grant, it provides in terms that a new document in greater form was subsequently to be issued.

It may not, therefore, be considered within the regulations above cited, which require the final grant to be delivered to the grantee.

But if such delivery was required before the grantee became possessed of an equity in the premises, which should be confirmed to him under the act of Congress of March 3d, 1851, the evidence shows that the law has been complied with in this case.

The actual placing of a deed in the hands of the grantee was never, even by the strict rules of the common law, indispensable to the estate of the grantee.

The delivery to a third person for the use of the party in whose favor a deed is made, where the grantor parts with all control over the deed, or where the grantee afterwards accepts it, makes the deed effectual as a conveyance of the title.

Doe D. Garnon vs. Knight, 5 B. & C., 671.

11 Eng. C. L. Repts.

Belden vs. Carter, 4 Day R., 66.

Souverbye vs. Arden, 1 John. Ch. R., 240.

Hanson vs. Trustees, &c., 12 Mass. R., 456.

Hatch vs. Hatch, 9 Mass. R., 307.

Chapel vs. Bull, 17 Mass. R., 213.

Rathbun vs. Rathbun, 6 Barb. R., 98.

Arrison vs. Harmstead, 2 Barr. R., 191.

Burt vs. Cassety, 12 Alab. R., 734.

Maynard vs. Maynard, 10 Mass. R., 456.

Herbert vs. Herbert, 1 Bree., 282.

Chess vs. Chess, 1 Penn. R., 32.

Gilbert vs. North, 23 Wend. R., 43.

Ingraham vs. Grigg, 13 S. & M., 22.

Beers vs. Broome, 4 Conn. R., 247.

Dawson vs. Dawson, Rice, 243.

Hedge vs. Drew, 12 Pick. R., 141.
 Church vs. Gilman, 15 Wend. R., 656.
 Buffum vs. Greene, 5 N. H., 71.
 McKinney vs. Rhoades, 5 Watts, 343.
 Rigler vs. Cloud, 2 Harr. (Pa.) R., 361.
 Commercial Bank vs. Reckless, 1 Halst. Ch. R., 430.
 Porter vs. Cole, 4 Greenl. R., 25.
 1 Smith on Contracts, 9.
 2 Hilliard on Real Property, 298.

The delivery to Sutter was clearly a delivery for the benefit of all interested in the grant, and was as good and effectual as if delivered to each of them in person.

2. If this were not so, still it is submitted that under the Spanish system the title would be good in Nye. The delivery of the original grant by the government, represented by the governor to another public office, at the head of which was Captain Sutter, having in charge the jurisdiction of New Helvetia and Sacramento, was in accordance with the ordinary disposition of original grants. In this aspect of the case the document constituting the grant was the *protocol*, and the proper evidence of title to be delivered to the grantees would be an official copy, authenticated by the officer in charge of the original. Accordingly, it is specified in the document that copies shall be given by that officer, which shall serve the grantees as titles until the final and formal document shall issue after confirmation. Copies thus emanating from a public office, where the original belongs and is retained, are *public writings*, and have the same force and effect as *originals*, and are themselves evidence in the same manner as original documents with us under the great seal of the government, importing verity and requiring no further proof of authenticity.

United States vs. Perchman, 7 Pet. R., 51.
 Owings vs. Hale, 9 Pet. R., 624.
 United States vs. Wiggins, 14 Pet. R., 334.
 Same vs. Acosta, 1 How. R., 24.
 Same vs. Delespine, 15 Pet. R., 226.
 Same vs. Rodman, 15 Pet. R., 130.

The provisions of the regulations of 1828, above cited, requiring only the final title—that is, the title after confirmation by the departmental assembly or the supreme government—to be delivered to the grantee, there is no inconsistency in holding that the ordinary proceedings in Spanish countries in such matters might well be taken by the public authorities. This course was in accordance with their uniform rule of practice, and is surely good where no other is specifically required by law. It was competent for the governor so to order in the case, without a violation of the regulations of 1828, (as he has clearly done in the document itself,) and an

official copy having been duly delivered to the claimant and given in evidence, it may well rest upon it as evidence of his right to the land claimed.

Even if this were the *final document* of title, it is not admitted that the grant would be void under the regulations above cited. The express words of the grant show that the grant was made, the concession perfected, and the grantees absolutely invested with the estate, and the document of title deposited in a public office for the benefit of the grantees. The original thus filed with the express order that it shall be for the benefit of the grantees, and that official copies be issued to them as evidence of their title, must be abundantly sufficient to secure their right to the property. The Spanish law, recognised in this court in the cases above cited, regards such copy as an original, and the title good.

In any aspect of the case, then, the claimant in this case was invested with an estate in the premises, which brings him within the provisions of the act of March 3, 1851, and is entitled to a confirmation of the decree rendered in his favor in the court below.

ALPHEUS FELCH.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES,

Plaintiff in Error,

vs.

MICHAEL C. NYE,

Defendant in Error,

BRIEF FOR DEFENDANT IN ERROR, BY HORACE HAWES.

Sterett, printer, 145 Clay st., San Francisco.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, Plaintiff in Error, <i>vs.</i> MICHAEL C. NYE, Defendant in Error.	} Brief for Defendant in Error, by HORACE HAWES.
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THE FACTS IN EVIDENCE.

Michael C. Nye, by petition dated 22d Dec., 1843, addressed to His Excellency the Commandante General and Governor of both Californias, represents, that he has resided two years in the Department, and being possessed of some cattle and horses, is desirous of obtaining a tract of vacant public land bounded on the north by the Arroyo de los Venados, on the south by the rancho of Arroyo Chico, on the west by the river Sacramento, and on the east by the sterile lands which separate it from the Sierra Nevada ; which tract consists of four square leagues, and is represented by a map accompanying the petition—he prays that His Excellency will accede to his application.

By an order of the Governor Micheltorena, indorsed in the margin, and dated Monterey, Dec. 31, 1843, information is required from the Secretary.

Following this, is an indorsement signed by the Secretary Manuel Jimeno, dated Jan. 4, 1844, saying “ His Excellency orders that the present application be passed to Mr. Sutter as *Encargado* of the frontier of Sacramento, to the end that he may inform respecting its contents.” Then follows Capt. Sutter’s *informe*, dated Jan. 27, 1844, stating that “ the land which Mr. Michael Nye asks for in this petition, and which is represented in the annexed map is unoccupied, and he gives this certification for the ends that may be convenient.”

It appears that Capt. Sutter, the *Encargado* of the District of Sacramento, was invested (by the appointment of Gov. Micheltorena, it is presumed,) with the functions of ordinary Judge, Prefect and Military Commandant for the frontier.

About this time, as the Court are informed from facts connected with the public history of the country, Governor Micheltorena contemplated making a visit in person to the northern frontier, and with that view had deferred acting definitively upon several applications on the part of settlers in that quarter. But in consequence of the disturbed state of the country, and the incessant occupations of the Government, he was not only prevented from making the contemplated visit, but found it inconvenient to attend for the present, to the issuing of individual patents to those settlers who were entitled to them.

Among the ample powers with which he was invested by the instructions of the Supreme Government of 11th Feb., 1842, *over and above those which the laws and ordinances then in force, confer upon him as the Governor and Commandante General*, were included all those *general* and unrestricted powers expressed in the 16th Article of the Colonization Law of 18th Aug., 1824.

In virtue of this authority, he promulgated the following decree :

Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the *Plana Mayor*, Governor, Commandant General and Inspector of the Department of the Californias.

The Supreme Departmental Government being unable in consequence of its incessant occupations, to draw up, one by one, the respective title papers (*titulos*) for those citizens who have solicited lands, with *informe* in their favor of Mr. Augustus Sutter, Captain and Judge charged with the jurisdiction of New Helvetia and Sacramento :

In the name of the Mexican nation, I do by these letters confer upon them and their families the property of the lands designated in their respective applications (*instancias*) and maps (*desenos*), upon all and each one who have solicited (the same) and obtained the favorable *informe* of the aforesaid Mr. Sutter up to the day of this date—so that nobody shall have power to question their right of property, a copy hereof, which Mr. Sutter shall hereafter give them, serving them for a formal title, with which they will present themselves to this Government, in order to extend the same title in due form and on stamped paper.

And that it may remain firm and stable in all time, I give this document, which shall be recognized and respected by all the authorities, civil and military, of the Mexican nation in this and the other Departments, authenticated with the military and governmental seals in Monterey, this twenty-second day of December, one thousand eight hundred and forty-four.

MICHELTORENA.

This decree signed by the Governor and sealed as specified in the body of it, was delivered to Capt. Sutter, who was the proper custodian of the archives pertaining to the extensive district of his civil and military command, and on the 8th of June, 1846, a copy duly certified, was by him delivered to Mr. Nye, the claimant in this case. (See documents on file and particularly deposition of Capt. Sutter.)

Mr. Nye took possession of his land within a year after this decree was promulgated, built a house and corrals, put on five or six hundred head of cattle and horses, and occupied the place personally, as will be seen from the depositions of John Saunders, Samuel J. Hensley and John Bidwell, at least till the beginning of 1846, probably about the time of the war, when it would seem that his occupation was interrupted by Indian hostilities. (See deposition of Capt. Sutter, in case of Peter Lassen; No. 182, stipulated to be considered in evidence in this case.)

With respect to the description and identity of the land claimed there can be no doubt. It is exactly described in the petition to the Governor, and in the map accompanying it. The petition and map are on file, and that the same identical map was attached, as it now appears, to the petition when presented to the Governor, and also when the *informe* of Capt. Sutter, and the orders of the Governor and Secretary were indorsed upon it, will be found sufficiently proved by the depositions of Capt. Sutter and John Bidwell.

The material facts as proved on the part of the claimant, which show that he is embraced within the terms of the Governor's general decree of 22d Dec., 1844, are:—

1. That he had previous to that decree petitioned for the land now claimed.
2. That this land was described in his petition and map annexed.
3. That the said petition and map had been presented to the Governor. (This appears by the indorsement of the Governor, Secretary, and depositions of Capt. Sutter and Mr. Bidwell.)
4. That the petitioner had presented himself to Mr. Sutter, the Judge and Military Commandant, and obtained a favorable *informe*.

These facts bring the claimant within the terms of the decree of Micheltorena, and upon him and his family the said decree "in the name of the Mexican nation, confers the property of the land described in his map."

THE LAW.

I shall say but little respecting the character and extent of the powers exercised by the Government of Tacubaya, from which Gov. Micheltorena received his commission, since it is deemed unnecessary in order to sustain the present claim, to assume that the Government possessed any other powers but those conferred

by the Colonization law of 18th Aug., 1824—powers which it was equally competent to exercise under any of the constitutions, *bases*, or revolutionary plans, by which Mexico has at any time been governed.

I will also pass over the question which naturally suggests itself, whether by virtue of the decree of Micheltorena, of 22d Dec., 1844, the various settlers described in it, including the present claimant, who had petitioned for lands and obtained favorable reports from Capt. Sutter, became invested with the legal title to the lands described in their respective applications and accompanying maps, subject to the legal conditions, for it is only necessary to inquire whether they acquired a just right to demand a legal conveyance ; whether the faith of the nation was pledged to them, that is, whether Micheltorena assuming in that degree to act in the name of the Mexican nation was duly authorized so to do.

The powers which Congress conferred on the Executive in the 16th article of the law of 18th Aug., 1824, over the subject of colonization in territories, are general, and subject to scarcely any restrictions: "The Government, conformably with the principles established in this law, shall proceed to colonize the territories of the Republic." This is the language of the act of Congress—the law. (Art. 16.)

The Government, under this general authority, may do everything that Congress itself could do which it may deem suitable and proper on the subject of colonization in the territories. Congress has specified the *subject* but not the *mode* of action. It has left this to the discretion of the Executive. It has conferred on the Executive all its own power. The will of the Executive, so far as it may not conflict with the constitution, or any existing legislative dispositions, constitutes the law which is to regulate the whole business of colonization. If this power to colonize includes the authority to distribute lands to colonists or settlers, which it undoubtedly does, the Government may make the distribution in any mode it may deem proper, in any mode that Congress itself could do. It may grant pre-emption or other rights in lands, either to individuals by name, or to classes of persons by description, and the rights thus acquired would be as sacred as those which may be acquired by settlers under any pre-emption or donation laws of the United States.

Congress has not only left the mode of colonization to the unrestricted discretion of the Executive, but has not even designated any of the functionaries that are to be employed in carrying it into effect. It has decreed that the territories of the Republic shall be colonized, and that the *Government* shall proceed to do this. Who and what is the Government? It is the Executive Power, at the head of which is the President of the Republic, and includes all its constitutional agents. "As it is not possible for the administration by itself alone to attend to all the diversified objects which are committed to its charge, throughout the whole extent of the national territory, the division of this territory into

districts, and placing at the head of the several divisions and subdivisions, of direct agents with equal power to regulate the objects of their incumbency, are the only means of organizing the public administration." (*Derecho Administrativo* by Lares, p. 18.)

One of the essential characteristics of the Executive administration in Mexico is its *unity*, which is attained by the gradual and implicit dependence which the agents of the administration have upon their respective superiors. This dependence, intimately connected with ministerial responsibility, exacts that the inferior agent must obey his superior, or if he cannot, immediately resign. In order to maintain this unity, the superior agents find themselves frequently under the necessity of regulating the action of their subordinates by means of *oficios*, circulars and instructions. (ib. p. 38-39.) And hence it is that the official acts of every subordinate functionary have in their favor the legal presumption of having been performed in obedience to the orders of his superior, so that he who charges any excess of authority must prove it by producing a disavowal on the part of the superior. (ib. p. 199.) It does not devolve upon those who set up rights under such official acts, to prove their instructions or superior orders, for their existence is presumed, and he who alleges the contrary must prove it, which, as the instructions may have been, and in point of fact frequently are private, can only be done by an express disavowal on the part of the superior. (ib.)

Such would be the rule applicable in this case, with respect to the acts of Micheltorena, even if we were not in possession of the ample instructions under which his administration was conducted. I shall take it for granted that the document dated 11th March, 1842, purporting to be instructions from the Supreme Government to Gen. Micheltorena as Governor and Commandante General of the Californias, which will be found published in connection with Mr. Jones' argument in the case of Cruz Crevantes, is genuine.

Gen. Micheltorena was not restricted in his action on the subject of colonization in California, by the executive regulation of 1828.

It is admitted that he was bound to observe the existing laws, but he was not bound to observe that regulation. His conduct was to be governed by a different rule. "The President, acting in the full persuasion that he would not abuse his powers, but would exercise them for the welfare and service of all the inhabitants of that interesting and fertile department which the Supreme Government had placed under his charge and responsibility, was pleased to grant him, (Micheltorena,) *over and above the attributions assigned to him by the existing laws and regulations as Governor, Commandant General and Inspector, all the power which the Supreme Government could delegate to him,*" and among the subjects over which this unlimited authority was conferred, colonization is expressly mentioned. So that on the subject of colonization, Gen. Micheltorena possessed, *over and above the powers which had been previously conferred on the Governors of*

the Territories, all those which the Supreme Government could delegate.

That it could and did delegate the power to alienate the public domain for the purpose of colonization, has been held in effect by this Court in every decision it has pronounced in cases of California land claims, because the only power to grant land possessed by the Governors of the Territories, was delegated to them by the executive — not by Congress in the executive order or regulation of 21st Nov., 1828. That it could delegate to the Governor of California this power over the subject of colonization within the limits of the department, so that he could exercise it to the *same extent*, and in the *same mode* that it would be lawful for the Supreme Executive to exercise it, cannot be doubted. The exercise of the delegated authority must necessarily be subject to the superior control and supervision of the Supreme Government, because the authority conferred on it by the law is essentially inalienable. But to delegate authority or power is not to renounce it. The General executive must necessarily act through and by its subordinate agents, and these agents exercise within their respective demarcations *all* the executive functions comprehended in their instructions, subject to no restrictions whatever but such as may be imposed by the laws.

Gen. Micheltorena, then, possessed over the subject of colonization in California, all the powers which the Supreme Government could delegate to him, that is, *all the powers conferred upon the Government by the 16th article of the Colonization law of 1824*.

And it will be observed that the general and unrestricted authority claimed for him and for the general government from which his was derived, is not predicated upon the extraordinary powers with which the provisional executive was invested under the *Bases of Tacubaya*, but upon the *provisions of the law of 1824 alone*. So that so far as colonization was concerned, the restoration of constitutional order on the 13th of June, 1843, by the adoption of the *Bases Organicas*, did not change the condition of affairs in any respect whatever, the executive not having pretended to exercise on that subject any powers but those conferred by the then existing laws. No extraordinary power, indeed, could be more full, complete, and unrestricted than that which was conferred upon the Government over the subject of colonization before the Bases of Tacubaya were proclaimed, and which it has ever since possessed. And this is the power, as before shown, which was delegated to Gov. Micheltorena, and in virtue of which he promulgated the decree on which principally the claimant in this case bases his right of property.

What is the objection then to that decree? That it is not the form of title prescribed by the regulation of 1828. But that is immaterial, for the powers conferred on Micheltorena were *over* and *above* those comprehended in that regulation. Nor is it anything more nor less than a simple absurdity to contend that a claimant who applies for the *completion* of an *inceptive* title, the recognition of an equitable right, the execution of a formal con-

veyance, is bound to show that his title is already complete, and his right of property perfect, as it would be if all the provisions of the law had been observed.

This decree promises to the persons described in it, individual patents for their lands, in place of which a copy of the original order was to serve them *ad interim*. These individual patents were not necessary to confer the right of property, but to evidence it. The decree itself declares them already invested with the property, so that nobody shall ever have a right to question it, and pledges the national faith that it shall be respected in all time. But for the security of each individual, and for the purposes of legal proof, as often as occasion might require it, a patent executed on paper of the proper stamp was promised, and that is the document which is wanting, and which the United States is bound to supply.

Again, does this decree conflict with any of the restrictions imposed on the Executive by the laws? A careful examination of the several provisions of the act of 1824, and all the other laws on the subject of colonization, will show that it does not. It is then but the legitimate and regular exercise of the power conferred by law on the Executive, and Gen. Micheltorena assuming to act in the name of the Mexican nation, was duly authorized. It is the decree itself, be it remembered, that gives the right. It is not the delivery of the copy of it, which Capt Sutter was authorized to certify for the use of each one of the parties interested.

That was delivered as *evidence* only. If not delivered at all, it would not prejudice the right of property. The decree was valid as a public act as soon as signed by the Governor, or at least, as soon as promulgated. Certified copies could be obtained, or not, at the convenience of parties interested.

But even if the Government had constituted Capt. Sutter a director of colonization to invite settlers, distribute lands, and give possession, I see no objection to its doing so. This is the course of action which it has frequently adopted; it is within the general powers given by law.

Gen. Micheltorena then, having all the powers that the Supreme Government could delegate, and being, moreover, *ex officio* the constitutional agent of the Government by whom it must act in the Department of California, might, "conformably with the principles," and subject to the restrictions contained in the law of 1824, proceed in the colonization of that Department in any mode which he might deem proper.

The regulation of 1823, if it affords any objection to the decree referred to, is entirely out of the question. That is not a law; it is an executive order, an instruction by the same Supreme Government which afterwards superadded all its own power and authority without any restriction.

It follows, therefore, that Nye acquired a title of equal validity under the general decree of 22d Dec., 1844, that would have been conferred by a special individual grant to him by name, made in

strict conformity with all the requisites and formalities prescribed by the regulation of 1828. In the form of the grant there is no conflict with the act of Congress of 1824—the colonization law, while it is fully authorized by the ample powers under which Gen. Micheltorena's government was conducted.

The Mexican Government has proceeded in various modes in the distribution of lands to settlers. Under the regulation of 1828, the observance of which is very far from having been universal, a *document* signed by the Governor was to be given to each individual applicant.

Sometimes, as under the provisions of the convention entered into in London, 15th Sept., 1837, the holders of certificates entitling them to a certain number of acres of land, were to present themselves to the local authority, which would generally be the *Alcalde* or justice of the peace, and receive possession of the land which they might select to be surveyed off to them. By a regulation formed by the Executive on the 4th Dec., 1846, the business of colonization was committed almost entirely to a *junta* of its own creation, denominated the *Direccion de Colonizacion*.

This *junta* and its *agents* and *commissioners* in the States and Territories, were to make sales of lands and give the proper deeds to the purchasers, who were obligated to settle the lands (see art. 27, 29 and 31.) Sometimes the distribution to individual settlers has been made by *Empresarios*.

There is no law which declares that individuals who settle upon public lands by invitation of the Government, cannot acquire any rights except by receiving individual patents. Any act of the Government assuring to them a definite tract of land, is sufficient if they comply with the conditions incumbent on settlers. A general title for all the settlers throughout the Territory or Department would confer on each individual embraced within the terms of it, rights equally valid as if he had received an individual grant. There must be certainty in the person and certainty in the thing. But a general description is as good as an individual description.

The land which Michael C. Nye had petitioned for, with its boundaries, extent and locality, was precisely defined in the documents which the Governor had had before him, and which being indorsed by him and by the Secretary, as well as by the judge of the district in which the land lay, left no room for any uncertainty or mistake.

This land the Governor granted to the present claimant, not by name but by description, and declared that he should receive an individual patent to be made out to him by name, on application to the Government. We now call upon the Government to fulfil this engagement ; not to grant the land, but to give the evidence of title which was promised ; not to confer the property, but to

protect that which its predecessor solemnly pledged itself to recognize and respect in all time, and to "maintain the claimant in the free enjoyment" thereof.

The quantity of land petitioned for by Mr. Nye is fixed by the boundaries named and accompanying map, and will be found to consist of about four leagues square, and therefore whatever may be the *technical* import of the expression *cuatro leguas en cuadro* used in the petition, it is in this instance, and probably in several others where the petition was drawn up by the same hand, evidently meant to indicate the former quantity instead of the latter.

The argument hitherto is based entirely upon the hypothesis that the Executive officers were invested only with the *ordinary* and Constitutional powers. But it is a fact well known in the history of Mexico, that Santa Ana's government continued to exercise *legislative*, as well as executive powers, from the date of the *bases* of *Tacubaya*, until he was expelled from power. In the Tehuantepec question, our Government maintained the position that his acts were valid as those of the government *de facto*, even though of a strictly legislative character, and though not authorized by the *bases* *Organicas*, which were promulgated on the 13th June, 1843. Whether his Extraordinary or Dictatorial power, *rightfully*, ought to have terminated at the latter date, or whether he might rightfully continue to exercise them, as in fact he did, until his final expulsion from power, it is certainly not necessary to decide in this case. It is agreed in Mexico, that Santa Ana was really invested with, and exercised, under the *bases* of *Tacubaya*, the legislative, as well as executive power. The two powers of government were united in the same hands. While this extraordinary power continued, the acts of himself, and of his subordinates, whether legislative or executive, were equally valid and binding, or more properly speaking, there was, during this period, no division of powers, no distinction between legislative and merely executive acts. The Government was supreme and absolute. Its will was the law. There was no period during the absolute monarchy in Spain, when the powers of the King were more unrestricted. This is universally admitted in Mexico. The only question is, how long that absolute authority continued, and what force the acts of the Dictator, and his subordinates, had after the period arrived when he ought to have laid it down, but did not.

It is scarcely necessary to quote authorities in proof of this. I will, however, refer to the opinions of some statesmen and jurists in Mexico, whose particular attention was called to the subject, about the time that our Minister there was discussing the Tehuantepec question with the Mexican Government.

The subject is treated of in a manifesto, published in pamphlet, in the city of Mexico, in 1852, by Jose F. Ramirez, Minister of

Interior and Foreign Relations, in order to justify the Mexican Government in the position it had assumed, that the concession of a right of way, &c., across the Isthmus of Tehauntepec, which had been made to Jose Garay, and transferred to citizens of the United States, had been forfeited.

Also the same subject, (the powers of Santa Ana's Government,) is treated of in the report of a special committee of the House of Deputies, dated May 26, 1851, on the subject of the "Privilege conceded to Don Jose Garay, for opening an interoceanic communication through the Isthmus of Tehuantepec." This committee consisted of Conto, Cuevas, Fuente, and Don Lucas Aleman. The report will be found in a periodical work published in Mexico, entitled "*Variedades de Jurisprudencia*," vol. 2, page 388.

HORACE HAWES.

SUPREME COURT OF THE UNITED STATES.

No. 40.

THE UNITED STATES, APPELLANTS,

VS.

MICHAEL C. NYE.

APPEAL FROM NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

J. S. BLACK,

Attorney General.

SUPREME COURT OF THE UNITED STATES.

No. 40.

THE UNITED STATES, APPELLANTS,

VS.

MICHAEL C. NYE.

BRIEF.

This is the first of a series of similar cases which are before this court to be decided. The grant from which the claimants derive title was made by Gov. Micheltorena on the 22d December, 1844, and reads as follows: (This translation, taken from Rose and Kinlock's case, No. 147, as being the most accurate.)

“Manuel Micheltorena, general of brigade of the Mexican army, &c.

“This supreme government of the department not being able at the present time, on account of being closely occupied, to extend one by one the respective titles to all the citizens who have petitioned for lands, with favorable reports from Senor Don Augustus Sutter, captain and judge in charge of the jurisdiction of the New Helvetia and Sacramento;—by these letters, in the name of the Mexican nation, I grant unto them and their families, the lands described in their petitions and maps; to all and each one of them who has solicited and obtained from said Senor Sutter, up to the day of this date, favorable reports. That no one may be able to dispute their ownership, a copy of this given them hereafter by said Senor Sutter, serving them as a formal title, with which they shall present themselves to this government, for the purpose of delivering to them the said title in due form, and upon paper of the corresponding seal.

“And for the due testimony thereof at all times, I give this present document, which shall be acknowledged and respected by all the civil and military authorities of the Mexican nation in this and all the other departments.

“Duly authenticated under the military and governmental seals at Monterey, on the 22d day of December, 1844.

“MAN'L MICHELTORENA.”

This is the “general title,” under which a large number of parties claim.

In this particular case it is shown by the testimony that Michael C.

Nye, on the 22d December, 1843, made his application for the place called "Willy," four square leagues, with description of the land, and map. (See p. 9.) He styles himself in his petition "a native of the United States, and resident in this department for two years."

December 31, 1843.—Micheltorena refers the petition to Jimeno, the secretary of state.

January 4, 1844.—Jimeno refers it to Sutter.

January 27, 1844.—Sutter reports the land to be unoccupied.

June 8, 1846.—Sutter certifies a copy of the general title to Nye.

In the latter part of 1845 Nye built a log hut on the land, and occupied it with stock for three or four months, when, in consequence of Indian hostilities, he abandoned it, and never returned. (Testimony of John Sanders, p. 4.)

The first question to be decided is the validity of the general grant.

It is not denied that a deed may be valid without designating the donee by name. If there is such a description as identifies the person with certainty, it is sufficient.

This question turns upon the special laws and principles, applicable to the alienation of the public lands of California.

If such a deed would be good between individuals, it does not follow that it is good as a grant of land by the governor of California.

The power of the Mexican governors to alienate the public domain, was guarded by very well defined and wise limitations and conditions. A petition was to be presented, describing with particularity both the applicant and the land applied for. (*2d rule of 1828.*)

That petition was to be referred by the governor to some proper authority, to report on the fitness of the grant, both as to the land and the applicant. (*3d rule.*)

The report being made, the governor was still to judge of the propriety of granting. (*4th rule.*)

If he determined to grant, his duty was to issue a documentary title, in which it was to be stated that all the prerequisites of the law had been complied with. (*8th rule.*)

The grant shall be duly recorded, with the petition, in a book kept for the purpose. (*9th rule.*)

The governor shall designate a time within which he shall occupy and cultivate, and the grant to be void if this is not complied with. (*11th rule.*)

Finally, the approbation of the departmental assembly, or of the supreme government, was required to give definite validity to the grant. (*5th and 6th rules.*)

If this grant can be sustained as legal, the wholesome restraints imposed by these regulations are in vain. The petition and the information are wholly insufficient; the one does not state the religion, the profession, nor the number of the family; the other does not supply any of this information, nor does it inform the governor whether the land is irrigable or not, which is necessary under the 12th section of the decree of August 18, 1824.

But the "informe," such as it was, had never been before the governor. There is no evidence that he ever saw it, and from the fact

that, in this and the other cases, the petition and "informe" are produced from the custody of the petitioners, instead of being retained, as was the rule and custom, to be laid before the assembly and recorded in the proper book, we have a right to conclude, what was doubtless the fact, that these petitions and Sutter's report had never been returned to the governor.

It is a farce to say that the governor had passed judgment upon the propriety of these applications, when he did not, and could not know what cases would be embraced in his grants; for it includes all who, *up to that date*, had obtained favorable reports from Sutter; and it is not pretended that even any list of the reports had been furnished. The grant is issued in such a way that the record of the title and the approbation of the assembly is made impossible, unless at the choice of the grantee. It places it in the power of one man (Sutter) to make the grant extend to all, or any, of those whose petitions had been referred to him; and even to others, for the grant is not to those whose petitions had been referred to Sutter, but to those who had obtained favorable reports. Some of the cases depend on a report of Sutter given without any reference, and it is hard to say why the grant, if valid, should not cover them.

If the governor had given to Sutter blank grants already signed, to be filled up and issued at his discretion, no one will say that it would have been legal; yet this transaction virtually amounts to the same thing.

The necessity of the approbation of the assembly is utterly ignored. No provision whatever is made for submitting the matter to them. So far from any record of the titles being kept in any book, it does not appear that any list or memorandum was kept by any one. Indeed the inference is irresistible that Gov. Micheltorena did not know to whom he was granting titles. Under the provisions of the Mexican law, if the grant is lost, a permanent record is accessible to show at least that a grant was issued, and to whom, and where the land lay. Several cases exist under this grant, where the claimants allege that the petition (and the report written on it) is lost. There is no record anywhere, to show that they ever did petition; and we are left to parol evidence of two or three men, testifying to the date and contents of papers that they have not seen for eight or ten years. And upon such evidence, if this grant be sustained, vast quantities of the best land in California pass to individuals.

The testimony of Sutter (p. 16) shows that the grant was issued by Micheltorena, to ingratiate himself with the Americans for his personal benefit, and was, in every view of it, a gross abuse of the power intrusted to him.

The grant is further defective in not stating that the requisites of the law had been complied with. (8th rule of 1828.) It could not be so stated truthfully, and the case shows the necessity and wisdom of the rule.

The grant does not designate any time within which the grantee shall occupy and cultivate. (11th rule.)

These are the objections to the legal validity of this general grant. They are both to the form and to the substance.

The paper is not such as the law requires; the preliminary proceedings are not such as the law requires; and the action of the governor is such as to open the door wide for fraud, and utterly defeat the precautions of the legislature.

Upon what sort of testimony must these grants be confirmed? Not upon a solemn grant under the hand of the governor and the seal of the State; not upon authentic record books in which the title is preserved; not upon the journals of the departmental assembly, but solely upon parol evidence, and virtually on the evidence of one man; for it depends entirely on the statement of Mr. Sutter, to show that his report was anterior to the order of the governor. The petition, report, and map do not appear to have been taken from any Mexican archives. They are produced by the claimant and seem to have been entirely in his custody.

For all these reasons we insist that there is no legal validity in the general grant of Micheltorena.

In this particular case, and in most of the others, its validity may be still more conclusively impeached.

In 1842 a decree of the Mexican government was enacted, (found in 1st Rockwell's Sp. and Mexican Law, p. 611,) by the 9th article of which foreigners are forbidden to acquire land in the frontier departments, without express license from the supreme government.

California was a frontier department, and Mr. Nye was a foreigner.

He was, moreover, a native of the United States, and by a decree of the supreme government of July 4, 1843, reiterated October 9, 1843, the natives of the United States were especially forbidden, not only to become residents, but to remain in the country.

These decrees are found in a volume of Mexican archives, filed in Limantour's case, and are marked in that volume as exhibit U, Nos. 1 and 4.

It was directly in the teeth of these laws, that Micheltorena, to subserve his own interests, issued this grant.

The only possession proved in this claimant is, (Sanders's testimony, p. 3,) that in 1845 Nye built a log house and staid on the place three or four months; he then abandoned, and seems to have taken no notice of it from June 7, 1846, when Sutter gave him his copy of the title, up to May, 1852, when he filed this claim. He shows that in 1845 or 1846 he left in consequence of Indian hostilities; but does not show that such hostilities prevented him from returning during six years.

No injury will accrue to Mr. Nye in consequence of his being deceived into a belief of his title; and the claim should be rejected.

The further position is taken by the appellants, that, at the time this grant was made, General Micheltorena was not *de facto* the governor of California, and had no right to make grants of land.

He was not actually in possession of the government, and his power was not acknowledged by the assembly nor the other officers of State.

This we insist upon, even if the general grant is correctly dated ; but we also insist that the grant, if made at all, was a subsequent transaction.

For these points we shall refer to the history of the times as exhibited in the volume of archives attached to the record in Limantour's case.

We shall insist, moreover, that no public officer can make a grant of public land except by matter of record.

BEFORE THE
United States Board of Land Commissioners
FOR CALIFORNIA,

**Michael C. Nye vs. The United States. Claim No. 226, for
the Rancho called "Willy," embracing Four Square
Leagues on the Sacramento River.**

BRIEF FOR CLAIMANT
BY HORACE HAWES OF COUNSEL.

THE FACTS.

Michael C. Nye, by petition dated 22d Dec., 1843, addressed to His Excellency the Commandante General and Governor of both Californias, represents that he has resided two years in the Department, and being possessed of some cattle and horses is desirous of obtaining a tract of vacant public land bounded on the north by the Arroyo de los Venados, on the south by the rancho of Arroyo Chico, on the west by the river Sacramento, and on the east by the sterile lands which separate it from the Sierra Nevada; which tract consists of four square leagues, and is represented by a map accompanying the petition—he prays that His Excellency will accede to his application.

By an order of the Governor Micheltorena, endorsed in the margin, and dated Monterey, Dec. 31, 1843, information is required from the Secretary.

Following this, is an endorsement signed by the Secretary Manuel Jimeno, dated Jan. 4, 1844, saying "His Excellency orders that the present application be passed to Mr. Sutter as *Encargado* of the frontier of Sacramento, to the end that he may inform respecting its contents."

Then follows Capt. Sutter's *informe*, dated Jan. 27, 1844, stating that "the land which Mr. Michael Nye asks for in this petition, and which is represented in the annexed map is unoccupied, and he gives this certification for the ends that may be convenient."

It appears that Capt. Sutter, the *Encargado* of the District of Sacramento, was invested (by the appointment of Gov. Micheltorena, I presume) with the functions of ordinary Judge, Prefect and Military Commandant for the frontier.

About this time, as the Commission are informed from facts connected with the public history of the country, Governor Micheltorena contemplated making a visit in person to the northern frontier, and with that view had deferred acting definitively upon several applications on the part of settlers in that quarter. But in consequence of the disturbed state of the country, and the incessant occupations of the Government, he was not only prevented from making the contemplated visit, but found it inconvenient to attend for the present, to the issuing of individual patents to those settlers who were entitled to them.

Among the ample powers with which he was invested by the instructions of the Supreme Government of 11th Feb., 1842, *over and above those which the laws and ordinances then in force, confer upon him as the Governor and Commandante General*, were included all those *general* and unrestricted powers expressed in the 16th Article of the Colonization Law of 18th Aug., 1824.

In virtue of this authority, he promulgated the following decree :

Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the *Plana Mayor*, Governor, Commandant General and Inspector of the Department of the Californias.

This Supreme Departmental Government being unable in consequence of its incessant occupations, to draw up one by one the respective title papers (*titulos*) for those citizens who have solicited lands, with *informe* in their favor of Mr. Augustus Sutter, Captain and Judge charged with the jurisdiction of New Helvetia and Sacramento :

In the name of the Mexican nation, I do by these letters confer upon them and their families the property of the lands designated in their respective applications (*instancias*) and maps (*deseños*), upon all and each one who have solicited (the same) and obtained the favorable *informe* of the aforesaid Mr. Sutter up to the day of this date—so that nobody shall have power to question their right of property, a copy hereof, which Mr. Sutter shall hereafter give them, serving them for a formal title, with which they will present themselves to this Government, in order to extend the same title in due form and on stamped paper.

And that it may remain firm and stable in all time, I give this document, which shall be recognized and respected by all the authorities, civil and military, of the Mexican nation in this and the other Departments, authenticated with the military and governmental seals in Monterey, this twenty-second day of December, one thousand eight hundred and forty-four.

MICHELTORENA.

This decree signed by the Governor and sealed as specified in the body of it, was delivered to Capt. Sutter, who was the proper custodian

of the archives pertaining to the extensive district of his civil and military command, and on the 8th of June, 1846, a copy duly certified, was by him delivered to Mr. Nye, the claimant in this case. (See documents on file and particularly deposition of Capt. Sutter.)

Mr. Nye took possession of his land within a year after this decree was promulgated, built a house and corrals, put on five or six hundred head of cattle and horses, and occupied the place personally, as will be seen from the depositions of John Sanders, Samuel J. Hensley and John Bidwell, at least till the beginning of 1846, probably about the time of the war, when it would seem that his occupation was interrupted by indian hostilities. (See deposition of Capt. Sutter, in case of Peter Losson, No. 182, stipulated to be considered in evidence in this case.)

With respect to the description and identity of the land claimed, there can be no doubt. It is exactly described in the petition to the Governor, and in the map accompanying it. The petition and map are on file, and that the same identical map was attached, as it now appears, to the petition when presented to the Governor, and also when the *informe* of Capt. Sutter and the orders of the Governor and Secretary were endorsed upon it, will be found sufficiently proved by the depositions of Capt. Sutter and John Bidwell.

The material facts as proved on the part of the claimant, which show that he is embraced within the terms of the Governor's general decree of 22d Dec., 1844, are:—

1. That he had previous to that decree petitioned for the land now claimed.
2. That this land was described in his petition and map annexed.
3. That the said petition and map had been presented to the Governor. (This appears by the endorsement of the Governor, Secretary, and Depositions of Capt. Sutter and Mr. Bidwell.)
4. That the petitioner had presented himself to Mr. Sutter the Judge and Military Commandant, and obtained a favorable *informe*.

These facts bring the claimant within the terms of the decree of Micheltorena, and upon him and his family the said decree "in the name of the Mexican nation, confers the property of the land described in his application and map."

THE LAW.

In the argument before the Board, reference was had to several authorities in order to explain the character and extent of the powers exercised by the government of Tacubaya, from which Governor Micheltorena received his commission.

That part of the argument will have with the Board the influence which they may deem it entitled to, but will not now be repeated, since it is deemed unnecessary in order to sustain the present claim, to assume that the Government possessed any other powers but those conferred by the Colonization law of 18th Aug., 1824—powers which it was equally competent to exercise under any of the constitutions, *bases*, or revolutionary plans, by which Mexico has at any time been governed.

I will also pass over the question which will naturally suggest itself,

whether by virtue of the decree of Micheltorena, of 22d Dec., 1844, the various settlers described in it, including the present claimant, who had petitioned for lands and obtained favorable reports from Capt. Sutter, because invested with the legal title to the lands described in their respective applications and accompanying maps, subject to the legal conditions, for it is only necessary to enquire whether they acquired a just right to demand a legal conveyance; whether the faith of the nation was pledged to them, that is, whether Micheltorena assuming in that decree to act in the name of the Mexican nation was duly authorized so to do.

The powers which Congress conferred on the Executive in the 16th article of the law of 18th Aug., 1824, over the subject of colonization in the territories, are general, and subject to scarcely any restrictions.—“The Government, conformably with the principles established in this law, shall proceed to colonize the territories of the Republic.”

The Government, under this general authority, may do every thing that Congress itself could do which it may deem suitable and proper on the subject of colonization in the territories. Congress has specified the *subject*, but not the *mode* of action. It has left this to the discretion of the Executive. It has conferred on the Executive all its own power. The will of the Executive, so far as it may not conflict with the constitution, or any existing legislative dispositions, constitutes the law which is to regulate the whole business of colonization. If this power to colonize includes the authority to distribute lands to colonists or settlers, as it undoubtedly does, the Government may make the distribution in any mode it may deem proper, in any mode that Congress itself could do. It may grant pre-emption or other rights in lands, either to individuals by name, or to classes of persons by description, and the rights thus acquired would be as sacred as those which may be acquired by settlers under any pre-emption or donation laws of the United States.

Congress has not only left the mode of colonization to the unrestricted discretion of the Executive, but has not even designated any of the functionaries that are to be employed in carrying it into effect. It has decreed that the territories of the Republic shall be colonized, and that the *Government* shall proceed to do this. Who and what is the Government? It is the Executive Power, at the head of which is the President of the Republic, and includes all its constitutional agents. “As it is not possible for the administration by itself alone to attend to all the diversified objects which are committed to its charge, throughout the whole extent of the national territory, the division of this territory into districts, and the placing at the head of the several divisions, and subdivisions, of direct agents with equal power to regulate the objects of their incumbency, are the only means of organizing the public administration.”—(*Derecho Administrativo* by Lares, p. 18.)

One of the essential characteristics of the Executive administration in Mexico is its *unity*, which is attained by the gradual and implicit dependence which the agents of the administration have upon their respective superiors. This dependence, intimately connected with ministerial responsibility, exacts that the inferior agent obey his superior, or if he cannot, immediately resign. In order to maintain this unity, the superior agents find themselves frequently under the necessity of regulating the action of their subordinates by means of *oficios*, circulars, and

instructions. (ib. p. 38-39.) And hence it is that the official acts of every subordinate functionary have in their favor the legal presumption of having been performed in obedience to the orders of his superior, so that he who charges any excess of authority must prove it by producing a disavowal on the part of the superior. (ib. p. 199.) It does not devolve upon those who set up rights acquired under such official acts, to prove the instructions or superior orders, for their existence is presumed, and he who alledges the contrary must prove it, which, as the instructions may have been, and in point of fact frequently are private, can only be done by an express disavowal on the part of the superior. (ib.)

Such would be the rule applicable in this case, with respect to the acts of Micheltorena, even if we were not in possession of the ample instructions under which his administration was conducted. I shall take it for granted that the document, dated 11th March, 1842, purporting to be instructions from the Supreme Government to Gen. Micheltorena as Governor and *Comandante General* of the Californias, which will be found published in connection with Mr. Jones' argument in the case of Cruz Cervantes, is genuine. In my own mind all doubt is removed on that subject, from the fact that I received from the hand of the Minister of Interior and Exterior Relations a certificate respecting the powers of Micheltorena, under the seal of that department, which accords perfectly with the contents of the document above referred to.

Gen. Micheltorena was not restricted in his action on the subject of colonization in California, by the Executive regulation of 1828.

It is admitted that he was bound to observe the existing laws, but he was not bound to observe that regulation. His conduct was to be governed by a different rule. "The President, acting in the full persuasion that he would not abuse his powers, but would exercise them for the welfare and service of all the inhabitants of that interesting and fertile department which the Supreme Government had placed under his charge and responsibility, was pleased to grant to him, (Micheltorena,) *over and above the attributions assigned to him by the existing laws and regulations* as Governor, Commandant General and Inspector, *all the powers which the Supreme Government could delegate to him,*" and among the subjects over which this unlimited authority was conferred, colonization is expressly mentioned. So that on the subject of colonization, Gen. Micheltorena possessed, *over and above the powers which had been previously conferred on the Governors of the Territories*, all those which the Supreme Government could delegate.

That it could and did delegate the power to alienate the public domain for the purpose of colonization, this Board has rightly held in every case that it has decided. That it could delegate to the Governor of California this power over the subject of colonization within the limits of the Department, so that he could exercise it to the *same extent*, and in the *same mode* that it would be lawful for the Supreme Executive to exercise it, cannot be doubted. The exercise of the delegated authority must necessarily be subject to the superior control and supervision of the Supreme Government, because the authority conferred on it by the law is essentially inalienable. But to delegate authority or power is not to renounce it. The General Executive must necessarily act through and by its subordinate agents, and these agents exercise within their respective demarcations *all* the

executive functions comprehended in their instructions, subject to no restrictions whatever but such as may be imposed by the laws.

Gen. Micheltorena, then, possessed over the subject of colonization in California, all the powers which the supreme government could delegate to him, that is, *all the powers conferred upon the government by the 16th article of the colonization law of 1824.*

And it will be observed that the general and unrestricted authority claimed for him and for the general government from which his was derived, is not predicated upon the extraordinary powers with which the provisional executive was invested under the *Bases of Tacubaya*, but upon the provisions of the law of 1824 alone. So that so far as colonization was concerned, the restoration of constitutional order on the 13th of June, 1843, by the adoption of the *Bases Organicas*, did not change the position of affairs in any respect whatever, the Executive not having pretended to exercise on that subject, any powers but those conferred by the then existing laws. No extraordinary power, indeed, could be more full, complete, and unrestricted than that which was conferred upon the Government over the subject of colonization before the *Bases of Tacubaya* were proclaimed, and which it has ever since possessed. And this is the power, as before shown, which was delegated to Governor Micheltorena, and in virtue of which he promulgated the decree, on which principally the claimant in this case bases his right of property.

What is the objection then to that decree? That it is not the form of title prescribed by the regulation of 1828. But that is immaterial, for the powers conferred on Micheltorena were *over* and *above* those comprehended in that regulation. Nor is it any thing more nor less than a simple absurdity to contend that a claimant who applies for the *completion* of an *inceptive* title, the recognition of an equitable right, the execution of a formal conveyance, is bound to show that his title is already complete, and his right of property perfect, as it would be if all the provisions of law had been observed.

This decree promises to the persons described in it, individual patents for their lands, in place of which a copy of the general order was to serve them *ad interim*. These individual patents were not necessary to confer the right of property, but to evidence it. The decree itself declares them already invested with the property, so that nobody shall ever have a right to question it, and pledges the national faith that it shall be respected in all time. But for the security of each individual, and for the purposes of legal proof, as often as occasion might require it, a patent executed on paper of the proper stamp was promised, and that is the document which is wanting, and which the United States is bound to supply.

Again, does this decree conflict with any of the restrictions imposed on the Executive by the laws? A careful examination of the several provisions of the act of 1824, and all the other laws on the subject of colonization, will show that it does not. It is then but the legitimate and regular exercise of the power conferred by law on the Executive, and Gen. Micheltorena assuming to act in the name of the Mexican nation, was duly authorized. It is the decree itself, be it remembered, that gives the right. It is not the delivery of the copy of it, which

Capt. Sutter was authorized to certify for the use of each one of the parties interested.

But even if the Government had constituted Capt. Sutter a director of colonization to invite settlers, distribute lands, and give possession, I see no objection to its doing so. This is the course of action which it has frequently adopted; it is within the general powers given by law.

Gen. Micheltorena then, having all the powers that the Supreme Government could delegate, and being, moreover, *ex-officio* the *constitutional* agent of the Government by whom it must act in the Department of California, might, "conformably with the principles," and subject to the restrictions contained in the law of 1824, proceed in the colonization of that Department in any mode which he might deem proper.

The regulation of 1828, if it affords any objection to the decree referred to, is entirely out of the question. That is not a law; it is an executive order, an instruction by the same Supreme Government which afterwards superadded all its own power and authority without any restriction.

The Mexican Government has proceeded in various modes in the distribution of lands to settlers. Under the regulation of 1828, the observance of which is very far from having been universal, a *document* signed by the Governor was to be given to each individual applicant.

Sometimes, as under the provisions of the convention entered into in London, 15th Sept., 1837, the holders of certificates entitling them to a certain number of acres of land, were to present themselves to the local authority, which would generally be the Alcalde or justice of the peace, and receive possession of the land which they might select to be surveyed off to them. By a regulation formed by the Executive on the 4th Dec., 1846, the business of colonization was committed almost entirely to a *junta* of its own creation, denominated the *Dirección de Colonización*.

This *junta* and its *agents* and *commissioners* in the States and Territories, were to make sales of lands and give the proper deeds to the purchasers, who were obligated to settle the lands (see art. 27, 29, and 31.) Sometimes the distribution to individual settlers has been made by *Empresarios*.

There is no law which declares that individuals who settle upon public lands by invitation of the Government, can not acquire any rights except by receiving individual patents. Any act of the Government assuring to them a definite tract of land, is sufficient if they comply with the conditions incumbent on settlers. A general title for all the settlers throughout the Territory or Department would confer on each individual embraced within the terms of it, rights equally valid as if he had received an individual grant. There must be certainty in the person and certainty in the thing. But a general description is as good as an individual description.

The land which Michael C. Nye had petitioned for, with its boundaries, extent and locality, was precisely defined in the documents which the Governor had had before him, and which being endorsed by him and by the Secretary as well as by the judge of the district in which the land lay, left no room for any uncertainty or mistake.

This land the Governor granted to the present claimant, not by name but by description, and declared that he should receive an individual patent to be made out to him by name, on application to the Government. We now call upon the Government to fulfil this engagement; not to grant the land, but to give the evidence of title which was promised; not to confer the property, but to protect that which its predecessor solemnly pledged itself to recognize and respect in all time, and to "maintain the claimant in the free enjoyment" thereof.

The quantity of land petitioned for by Mr. Nye is fixed by the boundaries named and accompanying map, and will be found to consist of about four square leagues, and not four leagues square, and therefore whatever may be the *technical* import of the expression *cuatro leguas en cuadro* used in the petition, it is in this instance, and probably in several others where the petition was drawn up by the same hand, evidently meant to indicate the former quantity instead of the latter.

SUPREME COURT OF THE UNITED STATES.

No. 184.

THE UNITED STATES, APPELLANTS,

vs.

EMANUEL PRATT.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT
OF CALIFORNIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington, D. C.

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GIDEON, Print.

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal' a.

Be it remembered, that on this twenty-first of May, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Emanuel Pratt for the place named "Socayac" was presented, and ordered to be filed and docketed with No. 235, and is as follows, to wit:

(Vide page 5 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *December 21, 1852.*

In case No. 235, Emanuel Pratt for the place named "Socayac," the depositions of John A. Sutter and John Bidwell, witnesses in behalf of the claimant, taken before Commissioner Harry J. Thornton, now filed.

(Vide pages 7 and 9 of this Transcript.)

SAN FRANCISCO, *March 26, 1853.*

In the same case the depositions of John Bidwell, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 12 of this Transcript.)

SAN FRANCISCO, *May 31, 1854.*

In the same case, the deposition of George G. Snyder, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed.

(Vide page 13 of this Transcript.)

SAN FRANCISCO, *June 1, 1854.*

In the same case, the deposition of Jonathan O. Sherwood, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed.

(Vide page 16 of this Transcript.)

SAN FRANCISCO, *June 23, 1854.*

In the same case the deposition of John A. Sutter, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

(Vide page 18 of this Transcript.)

[REC. CLXXXIV, D. T., 1858.]—1

SAN FRANCISCO, *June 27, 1854.*

Case No. 235 was ordered to be placed at the foot of the 1st class cases on the trial docket.

SAN FRANCISCO, *July 8, 1854.*

In the same case the deposition of John P. Rhodes, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed.

(Vide page 22 of this Transcript.)

SAN FRANCISCO, *July 22, 1854.*

In the same case the depositions of George T. Wyman and John Bidwell, witnesses in behalf of the claimant, taken before Commissioner Peter Lott, were filed.

(Vide pages 29 and 37 of this Transcript.)

SAN FRANCISCO, *July 29, 1855.*

In the same case the counsel for the claimant filed the following stipulation, to wit:

(Vide page 58 of this Transcript.)

SAN FRANCISCO, *Aug. 21, 1854.*

In the same case the counsel for the claimant filed the affidavit of John C. Hays, with a stipulation annexed thereto.

(Vide page 57 of this Transcript.)

SAN FRANCISCO, *August 22, 1854.*

Case No. 235 was submitted on briefs and taken under advisement by the board.

SAN FRANCISCO, *July 10, 1855.*

In the same case Commissioner S. B. Farwell delivered the opinion of the board confirming the claim.

(Vide page 59 of this Transcript.)

And the following order was made, to wit:

(Vide page 62 of this Transcript.)

Petition.

To the honorable the Commissioners for settling private land claims in California.

The petition of Emanuel Pratt, a resident of the county of Sacramento, respectfully sheweth: That Juan Chamberlain, a naturalized citizen of the republic of Mexico, and a resident of the late district of New Helvetia, Sacramento, being possessed of some agricultural movables, presented his petition to Don Manuel Micheltorena, governor of California, on the 27th day of March, 1844, soliciting for himself a tract of land near the establishment

of Mr. Sutter, at a place called "Socayac," consisting of fifteen thousand varas, or three leagues of land, according to a map or diseño annexed to the said petition, and representing the rancho de "Socayac" as situated on the right bank of the river Cosumnes, about eight leagues southeast from the establishment of New Helvetia.

That said petition was accompanied by a recommendation from John Augustus Sutter, then judge and military commandante of the frontier of New Helvetia, as to the good character of said petitioner, and stating that the land was vacant.

That said petition and accompanying documents were referred to Manuel Jimeno, secretary of the government, who, on the 30th March, 1844, reported that *there* was no objection to granting to the land prayed for by the petitioner.

That on the 1st April, 1844, the favorable report of the secretary, Jimeno, was confirmed by a decree of Gov. Micheltorena.

That thereafter, on the 22d December, 1844, Gov. Micheltorena, by a decree of that date, granted in fee to all the citizens who had solicited lands, on the favorable report Don John A. Sutter, the respective lands designated in their petitions and plats, to all and each of them, up to the date of said decree, ordering that a copy of said decree should be delivered to each of the respective claimants by the said Sutter, which should have the force of a formal title.

That on the 5th April, 1845, a copy of the said decree, duly authenticated by the official signature of John Augustus Sutter, was delivered to the said John Chamberlain as his title to the rancho de "Socayac."

That the said rancho de "Socayac" is not subject to the exception of ten and twenty leagues, mentioned in the fourth section of the colonization law of Mexico of the 18th August, 1824.

Petitioner further represents, that said "Rancho de Socayac" was conveyed by the said John Chamberlain, on the 29th of March, 1846, to Perry McCoon, who, on the 25th November, 1850, conveyed the said rancho to George McKinstry, jr., and the said McKinstry conveyed the same to your petitioner.

That said rancho has been constantly occupied and cultivated by the said Chamberlain and those claiming under him, from March, 1844, until the present time, and that all the conditions of the law have been fully complied with.

Your petitioner therefore asks, that after due process and proof in the premises, your honors would establish and confirm his claim and title to the said rancho de "Socayac," to the extent herein claimed.

HASTINGS, THOMAS & MORSE, *Att'ys.*

Filed in office May 21st, 1852.

GEO. FISHER, *Sec'y.*

Recorded in record of petitions, vol. 1, pages 99, 100.

GEO. FISHER, *Sec'y.*

Deposition of John A. Sutter.

SAN FRANCISCO, Dec. 21st, 1852.

On this day, before Com'r Harry J. Thornton, came John A. Sutter, a witness in behalf of the claimant, Emanuel Pratt, petition No. 235, and was duly sworn, his evidence being given in English.

U. S. associate law agent was present.

Questions by Claimant.

Question 1st. What is your name, age, and place of residence?

Answer. My name is John A. Sutter; my age is forty-nine; my residence is in the district of Sacramento, where I have lived ever since the year 1839.

Question 2d. What office did you hold and exercise in that district, under the Mexican government?

Answer. I was military commander of the northern frontier, and judge of the jurisdiction of the district of Sacramento; I was the sole judge of that district, from the year 1840 to the conquest of the country by the United States.

Quest. 3. Were you acquainted with John Chamberlain, who claimed and owned the rancho de Socoyac, now claimed in this case?

Ans. I was acquainted with him; in 1840, I think it was, I took him into my employment as a blacksmith, and he lived and worked in my employment for several years.

Quest. 4. Were you acquainted with the land given to him under the general title of Gov. Micheltorena? If so, state where it was situated.

Ans. I am acquainted with said land; it is on the north bank of the Cosumnes river, and about twenty miles from the fort of New Helvetia, adjoining and next above land claimed by Sheldon.

Quest. 5th. Did Chamberlain take possession, occupy, and build upon the land described?

Ans. He did, and had large stock also thereon, and fields; his possession was first taken in 1843, and continued under my authority to occupy it until he sold it; since when it has been occupied by those claiming under him.

Quest. 6th. Have you examined the original of the expediente in this case, of which a traced copy is filed, marked B, taken from the public archives? And if so, state whether the signatures of yourself, that of Micheltorena, and Manuel Jimeno, where they occur in and upon said original, are genuine, and whether the traced copy on file in this case is correct.

Ans. I have examined the papers referred to, and compared them; the copy in this case marked B is true, and the signatures of the original exhibited are all genuine, being well acquainted with the same.

Quest. 7. Did you or not ever deliver to Chamberlain the certified copy of the original general title, espediente, from Micheltorena to you; and if so, at what time?

Ans. I did deliver to him, when it bears date, viz., 5th April, 1845, the original of the said general title of gov. being at that time in my possession.

Quest. 8th. Do you or not know whether the mesne conveyances, or sale of this land, as it is set forth in page one of the said expediente B from Chamberlain to Perry McCoon, was made at the time it purports to be, and for the consideration therein stated?

Ans. I do know that the said conveyance was made, and for the consideration stated therein.

Cross-examined by the Law Agent.

Quest. 1st. How do you know that you gave the paper called a general title to Chamberlain, being that his name does not appear upon it?

Ans. I remember well to have given a copy of it to Chamberlain.

Quest. 2d. Was Micheltorena governor of California on the 5th of April, 1845, when you gave the copy of the general title to Chamberlain?

Ans. I believe he was not governor at that time, though Chamberlain was entitled to have had it while he was. I was so engaged in military affairs that I could not earlier attend to the matter.

Quest. 3d. How long did you continue to deliver those titles after Micheltoreana's ceasing to be governor?

(This question objected to.)

Ans. I delivered some that I had not time to deliver before; afterwards each was delivered at the date of my certificate of such delivery.

J. A. SUTTER.

U. S. law agent present.

Sworn to and subscribed before me this 21st of Dec., 1852.

HARRY J. THORNTON,
Com'r, &c.

Filed in office Dec. 21, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, p. 350.

GEO. FISHER, *Sec'y.*

Deposition of John Bidwell.

SAN FRANCISCO, Dec. 21st, 1852.

On this day, before Com'r Harry J. Thornton, came John Bidwell, a witness in behalf of the claimant, Emanuel Pratt, petition No. 235, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

The witness, John Bidwell, being duly sworn, states that he is thirty-three years of age, has lived in California for eleven years, and am a surveyor by profession. I was well acquainted with John Chamberlain; he was for some years in the employ of Capt. John A. Sutter, at Sutter's Fort, in Sacramento county; I knew him first in the year 1847, and from that time to the year 1846, when he emigrated to Oregon. I am well acquainted with the land formerly claimed by him, called Socayac, and now claimed by Emanuel Pratt. This tract of land is situated on the north bank of the Cosumnes river, in the county of Sacramento, about twenty miles southeast of Sutter's Fort. The land is bounded on the west by the tract granted to Jared Sheldon, and on the north and east by vacant lands. The map or design attached to the original expediente which is now presented to me, and a copy of which is now on file in this case, was made by me in the year 1844, at the request of said Chamberlain, and under the direction of Capt. John A. Sutter.

The rancho de Socayac was occupied and cultivated by said Chamberlain during the years 1844 and 1845, and since by those claiming under him. There was a house built in 1844, which was standing on the land two years since.

I have been acquainted with Capt. John A. Sutter ever since I have been in California. He executed the office of chief magistrate and military commandant for the district of Sacramento from the year 1841 till the conquest of the country in 1846. I am well acquainted with his signature and handwriting, having often seen him write. The signature of John A. Sutter to the original papers now presented to me, and of which those copies on file in this case, are genuine.

The letter on the page addressed to Gov. Micheltorena, dated 19th March, 1844, is wholly written in the handwriting of Capt. Sutter. I am well acquainted with the writing of Gov. Micheltorena and Manuel Jimeno; I have seen them write often. Their signatures, where they occur in the original papers, are genuine. I have seen the original grant or authority to Capt. Sutter, of which a copy is hereto annexed, dated April 5th, 1845, and signed by John A. Sutter. I think the one here presented is a true copy.

The map made by me for Gov. Micheltorena had delineated upon it the rancho de Socayac. I was a subscribing witness to the decree on page 1 of the expediente on file in this case; the deed was executed at the time stated thereon; Chamberlain was present and authorized the act of sale.

Henry A. Huber, the other subscribing witness, was also present and signed the act of sale with me and Capt. Sutter. This claim, among others, was given to me to be taken to Los Angeles, to be presented to the governor, when I was prevented by the breaking out of hostilities which ended in the conquest of the country.

The portion of the map stained with green represents the land called Rancho de Socayac, hereinbefore described.

JOHN BIDWELL.

U. S. law agent present.

Subscribed and sworn to before me this 21st of December, 1852.

HARRY J. THORNTON,

Comm'r.

Filed in office Dec. 21, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, p. 355.

GEO. FISHER, *Sec'y.*

Deposition of John Bidwell.

SAN FRANCISCO, *March 26, 1853.*

On this day, before Com'r Hiland Hall, came John Bidwell, a witness on behalf of the claimant, Emanuel Pratt, petition No. 235, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows :

My name is John Bidwell, my age thirty-three years, and I reside I know the rancho called Socayac, on the Cosumnes river, in the county of Sacramento, and in relation to which I have heretofore given my deposition.

The plan of the land made by me in 1844, and mentioned in my former deposition, was made by direction of Mr. Chamberlain and Mr. Daylor. Daylor claimed an adjoining tract, now claimed by the heirs of Daylor and Jared Sheldon. The upper boundary of the Sheldon ranch, as pointed out to me by Mr. Daylor, began on the banks of the Cosumnes river, at a tree—an ash or an oak, I cannot remember which—standing a short distance above a certain deep gulch or slough, which then formed, and does now, the upper boundary of said Daylor's field, which was fenced in.

The distance of the tree from the gulch I should think did not exceed fifty yards. I was there two days ago. The tree, with others near it, has been cut down. The Sheldon and Socayac ranchos are bounded on each other; the boundary before mentioned being the division between them.

The rancho Socayac has been occupied with cattle and horses.

After John Chamberlain left the place, in 1846, it was occupied first by Perry McCoon, then by James Coutes, then by George McKinstry, and afterwards by Emanuel Pratt, who still occupies it. Chamberlain with a large adobe house and other building, and had large fields enclosed and under cultivation; and those claiming under have continued the cultivation to the present time.

The land along the river is nearly all cultivated.

In answer to inquiries by the associate law agent :

I understood the extent of the grant to be three square leagues: fifteen thousand varas in length along the river, by five thousand in width.

J. BIDWELL.

Subscribed and sworn to before me.

HILAND HALL, *Com'r.*

Filed in office March 26, 1853.

GEO. FISHER, *Sec'y.*

Recorded in E. B., vol. 3, page 660.

GEO. FISHER, *Sec'y.*

Deposition of G. G. Snyder.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *May 31, 1854.*

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the board of the U. S. land commissioners in said State, George G. Snyder, a witness on behalf of the United States in case No. 235 on the docket of said board, wherein Emanuel Pratt is claimant, and said witness, being duly sworn, on oath deposed, in English, as follows, to wit:

The attorney for claimant is present.

Questions by U. S. Law Agent.

1st question. What is your name, age, and place of residence?

Answer. My name is George G. Snyder; my age 34 years; my residence Sacramento county, California.

2d question. Are you acquainted with the tract of land called "Socayac," and claimed in this case? If yea, how long have you known it, and are there any natural or artificial marks to define the northern or eastern boundaries?

Answer. I am acquainted with that tract of and have known it about 3 years. I know nothing of the boundaries, except from what Mr. Pratt told me. He told me his claim commenced at a slough above Daylor's ranch, or thereabouts, and went up the river 3 leagues. He told me he did not know where the northern line would run, but his witness could tell. There is no artificial mark that I know of to show the northern and eastern boundaries, and I have been over it several times.

3d question. What is the nature of the country at the upper end of the claim? Is it hilly or mountainous? Is the said capable of cultivation generally, and does it or not include lands worked by miners in mining for gold?

(3d question objected to by claimant's att'y as leading the witness.—P. L.)

Answer. The country there is hilly and mountainous. Some

portion of the soil is very good, perhaps $\frac{1}{3}$ of the whole tract, and the claim includes lands worked by miners mining for gold. Perhaps one-third of the whole claim is mining land, and there are hundreds of miners working it in the winter when the water is suitable.

4th question. What is the character of the country at the lower end of the claim?

Answer. It is rather rolling.

Cross-examined by Claimant's Attorney.

1st question. Are you interested, directly or indirectly, in the event of this suit; and by whose procurement do you appear here as a witness?

Answer. I do not consider myself interested in the suit. I was called on by Mr. Crocker here to-day to testify in this case. That is the first intimation I had of becoming a witness in this case.

2d question. Are you a squatter upon or near this claim?

Answer. I lived near the supposed boundary. I do not know whether I am within the claim or not.

3d question. How did the conversation occur between you and Mr. Pratt which you mentioned in your examination in chief?

Answer. The conversation came up casually between us, and I asked him the boundaries of his claim, which led to what I have already stated of what he told me.

4th question. Did he pretend to speak with accuracy in relation to his boundaries?

Answer. I thought so at the time.

5th question. In this conversation, was it necessary for him to speak with accuracy as to his northern boundary in answer to your question?

Answer. I should think it would, if he wished to answer civilly.

6th question. How do you know the upper part of this claim is covered by miners?

Answer. Judging from the distance from the slough I mentioned up the river, it would take in the mining district, if we run three leagues, running measure.

GEO. C. SNYDER.

Subscribed and sworn to before me on this 31st day of May, A. D. 1854.

PETER LOTT,

Commissioner for taking testimony.

Filed in office May 31, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 4, p. 488.

GEO. FISHER, *Sec'y.*

[REC. CLXXXIV, D. T., 1858.]—2

Deposition of J. O. Sherwood.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *June 1, 1854.*

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Jonathan O. Sherwood, a witness on behalf of the United States, in case No. 235 on the docket of said board, wherein Emanuel is claimant; and said witness being duly sworn, deposed in English as follows, to wit:

The claimant's att'y is present.

Questions by U. S. Law Agent.

1st. question. What is your name, age, and place of residence?

Answer. My name is Jonathan O. Sherwood; my age twenty-six years; my residence Sacramento county, California.

2d question. Are you acquainted with the tract of land claimed by Emanuel Pratt, on the Cosumnes river; if yea, how long have you known it?

Answer. I am acquainted with and have known it since November, 1850.

3d question. Are there any natural or artificial marks to define the northern and eastern boundaries of his claim?

Answer. I know of none.

4th question. What is the nature of the country: is it hilly, mountainous, or level; to what extent is it capable of cultivation, and is there any mineral land upon it, and to what extent?

Answer. It is broken, hilly, and rocky; no very high elevations of land; the foot of the mountains came down on the upper portions of the claim. There is, perhaps, $\frac{2}{3}$ ds of the land that will pay for cultivation, and from a half to two-thirds of the claim is mineral land.

5th question. About how many miners are there mining for gold on said claim?

Answer. I should think about 100, or upwards.

Cross-examined by the Attorney for the Claimants.

1st question. How do you know the northern and eastern boundaries of the said claim?

Answer. I only know the northern boundary by knowing the distance of 3 leagues from where the claim begins below, on the river. I do not know the eastern boundary.

The witness corrects his answer to 4th question in chief, by saying he intended to be understood that there is comparatively a small portion of the land worth cultivating; it might be cultivated to the extent of $\frac{1}{3}$ d, but would not pay for cultivation to that extent.

J. O. SHERWOOD.

Subscribed and sworn to on this 1st day of June, A. D. 1854.

PETER LOTT,

Com'r for the taking of testimony, &c.

Filed in office June 1, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 4, p. 499.

GEO. FISHER, *Sec'y.*

Deposition of J. A. Sutter.

UNITED STATES OF AMERICA,

State of California, ss.

SAN FRANCISCO, *June 23, 1854.*

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners, John A. Sutter, a witness on behalf of the claimant, Emanuel Pratt, in case No. 235 on the docket of said board; and said witness being duly sworn, on oath deposed in English as follows, to wit:

The U. S. law agent is present.

Questions by Claimant's Counsel.

1st question. What is your name, age, and place of residence?

Answer. My name is John A. Sutter; my age 51 years; my residence Sutter county, Calif'a.

2d question. Have you testified in this case before? If yea, look at the document marked "In case 235, Exhibit 1 to depo. of Jno. A. Sutter, P. L.," and filed in case No. 201 in this board, and state whether the signature of Micheltorena thereto is genuine, and whether it is the original decree sent by Micheltorena to you from which the copy furnished by you to Chamberlain in this case was taken.

Answer. Yes, there is no mistake but that this is the identical original document sent by Micheltorena to me, from which the copy mentioned was taken, and Micheltorena's signature hereto is his genuine signature. I have often seen him write, and know his signature well.

Cross-examined by U. S. Law Agent.

1st question. When and from whom did you receive the said document?

Answer. It was during the war; I think it was about December, 1844. I received it by a courier from Micheltorena, while I was at the fort. He sent duplicates, for fear of one being lost, on account of the difficulties at that time in the country. It was at the time of the rebellion in California of the native Californians against the government of Mexico and Micheltorena, who was the Mexican governor.

2d question. Can you name the couriers who brought the documents to you?

Answer. Yes; one was Pablo Gutierrez, and the other was named Juan Brown, who was nicknamed "Flaco." Gutierrez is dead, and I do not know where Brown is.

3d question. Where was Micheltorena when these papers were delivered to you?

Answer. He was in Monterey.

4th question. When and how did you first apply for these grants?

Answer. I applied for them a few weeks before the couriers arrived with the grant, by the private letter sent from me by a messenger, the same Pablo Gutierrez, to Gov. Micheltorena. I applied for the land as a bounty to the soldiers who had served under me, for their services in the war which I had already mentioned.

5th question. How long had the war been progressing when you received the grants?

Answer. About 3 months.

6th question. How long, altogether, did that war continue?

Answer. Some little over three months.

7th question. Where did Micheltorena go after the war?

Answer. After the capitulation he returned to Monterey, and then, very soon after, left for Mexico.

8th question. Who took possession of the government immediately after and about the close of the war?

Answer. The governor was Pio Pico.

9th question. Why was the grant written on paper such as Americans use, and not on such as was used by Californians?

Answer. Perhaps they had no other—paper was very scarce here in those times.

10th question. Was there any explanation made by Micheltorena to you, privately or otherwise, or by any other person, why common foolscap paper was used, instead of the Spanish paper usually employed for making grants?

Answer. No; there was no explanation made. I only know that paper was purchased by the governor from ships which arrived when paper was difficult to get, and he was obliged to take such as could be got in that way.

11th question. Who was the leader of the opposition to Micheltorena, and what was the extent of that opposition throughout the country?

Answer. Gen. Castro and Alvarado were the principal leaders. They had about 900 men under arms from different parts of the country, among whom were some Americans and trapping parties from the lower country.

12th question. Were not the rebel party really the masters of the country at that time? if not, what power had Micheltorena to oppose to them, and where was that power principally concentrated?

Answer. No, the rebel party were not the masters of the country; Gov. Micheltorena was the regular governor under Mexican authority; but when he found he did not receive all the troops he wanted, he capitulated; Micheltorena's troops were about 700 or 800 troops. They were at Monterey, Santa Cruz, and Los Angeles, and I had about 400 men, of whom about 100 were Indians.

13th question. Where is the duplicate of this grant, and where was both kept before they went out of your custody?

Answer. I believe one was burned in Sacramento, when Mr. Fowler had my papers under his care—I think in 1851; and the other was given to Major Hensley. They were kept among my papers at the fort while I had them, before Fowler took charge of them.

14th question. How long after you received the original document was it that you gave Chamberlain a copy of it?

Answer. I think the date is on the copy, as I think I testified before in this case.

J. A. SUTTER.

Subscribed and sworn to before me, on this 22d day of June, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

Filed in office June 23, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 4, p. 647.

GEO. FISHER, *Sec'y.*

Deposition of J. P. Rhoads.
UNITED STATES LAND COMMISSION,
San Francisco, July 8, 1854.

On this day, before Commissioner R. Aug. Thompson, came John P. Rhoads, a witness in behalf of claimant, Emanuel Pratt, in case No. 235, who, after being duly sworn, deposed as follows:

Questions by Mr. Lawrence, Attorney for Claimant.

1st question. What are your name, age, and place of residence?

Answer. My name is John P. Rhoads; my age is thirty-five years; and I reside in Sacramento county.

2d question. Are you acquainted with the rancho known as Socayac in Sacramento county; if yea, where is it situated, and how long have you known it? Describe its boundaries, and your means of information thereof, fully.

Answer. I know the rancho, and have been acquainted with it between seven and eight years; it will be eight years next winter. I live within three miles and a half of the western boundary of it, where I have lived most of the time since the spring of 1847. I

became acquainted with the boundaries of the rancho shortly after I came to the country. The rancho is bounded on the western end by the rancho known as Sheldon's, and which is claimed by Mrs. Sheldon and others before this commission in case 173, I think. This line commences on the river Cosumnes at a rocky hill, which is the first high land coming in, on to the river on the northwest side of the river about its mouth. That hill is known, and has always been called since I came to the country, the basement of Sierra Nevada. There is a slough which makes out from the river immediately at the foot of this hill, and runs into what is known as Deer Creek slough. In high water the water runs through the slough, but not in common stage of water. There was an oak tree standing on the bank of the river and on the side, or rather at the foot of the hill on the western side of it. That was the starting point of the western line of the rancho. The line then runs in a northern direction or northwestern direction one league, crossing Deer Creek valley, and runs to a high range of hills dividing the waters of the American river and Cosumnes river. I run to the top of the divide at a place where the hills are higher than the others, in the immediate neighborhood. On this line there are stakes, and were blazed trees, when I came to the country. I do not know by whom they were blazed; it appeared to have been done some eighteen months or two years when I first saw them. The trees are cut down, but the stumps are there. The northern line of the rancho runs from the point on the divide above mentioned in an easterly direction, until it crosses Deer Creek valley, at a high point or sharp ridge where it enters the valley; it continues across the valley, angling about one mile, sticking on the other sides at three or four very high buttes, all standing in range with this line. They can be seen a long distance. They are very rocky, and some scrubby timber on some of them. The line then runs along the ridge to or near to the county line dividing El Dorado and Sacramento counties. The eastern boundary of the ranch is the county line above mentioned, or very near it, extending to the river between Cook's and Michigan bar; the south line is the river; the easterly line must run near the edge of some timber, a tract which is better known as the second quartz lead. I could trace out on the ground the lines above indicated; I think any person with good mother wit could from the testimony. The timber above mentioned was nearly north and south, and the northeast corner of the rancho would be about on the border of it.

2d question. Look at the map now presented to you, constituting part of document marked "B," heretofore filed in this case, and state whether it presents a correct description of the land known as "Socayac;" are the buttes mentioned by you delineated therein?

Answer. I see the map; it presents a correct representation of

the land. The buttes are laid down thereon; I do not see the name, but the representation of them is drawn correctly.

3d question. What are your means of knowing these boundaries?

Answer. When I migrated to the country in 1846, I intended to go on to the public lands in that neighborhood. Mr. McCoon, who then owned the Socayac grant, pointed out the lines to me, in company with Mr. Daylor, who was interested in the Sheldon ranch. In 1850 Mr. Daylor was the agent of Mr. Coates, who had then bought a part of Socayac grant, and he brought a suit against a person who had settled on a part of this land, as was supposed. There was a survey had of the land, and the defendant was found not be within the boundaries of the land. I heard the chain-bearers swear about the line in court. I have no other knowledge of the survey of the lines. The boundaries were pointed out to me by Daylor and McCoon.

4th question. Were these boundaries which you have mentioned recognised by the old inhabitants of the country when you first came here?

Answer. They were. (Mr. Croocker, on behalf of the government, objects to this question *of* leading and irrelevant.)

5th question. Where are said Daylor, McCoon, and Sheldon?

6th question. Are there any of the old Mexican inhabitants that you now know of, whose testimony can be procured in regard to the boundaries?

Answer. The Mexicans never lived in that part of the country until after the gold mines were discovered.

7th question. How long had Daylor, McCoon and Sheldon lived in the neighborhood of this ranch?

Answer. I knew only from hearsay. They told me that they had had their grants about two years before I came to the country. They had been in the country, I understood, something like nine years.

Questions by Mr. Croocker.

1st question. When did you first see the grant and papers in this case?

Answer. I never saw them until to-day.

2d question. Can you read the Spanish language?

Answer. I cannot.

3d question. How do you know the boundaries of this grant when the grant is in the Spanish language?

Answer. I knew it in the first place by general information from the old settlers; in the next place by the survey before mentioned. I was not present when the survey was made.

4th question. Is not your entire information in reference to the western boundary derived from what Sheldon, Daylor and McCoon told you?

Answer. It is not; I have derived the information also from others, and from the blazed trees and stakes above mentioned.

5th question. Who told you that these trees and stakes had anything to do with that line?

Answer. Many different persons of the old settlers.

6th question. Who did they say put the stakes and made the blazed?

Answer. It was some person whom they named, but I do not remember his name; I think he was an Englishman.

7th question. Was not your entire information in reference to the northern and eastern boundaries derived from Perry and McCoon?

Answer. It was not. My brother-in-law, Mr. Daylor, showed me the northern line, and I also know by the survey while the lawsuit was pending, as before stated. I know the eastern line only by my own judgment. I never measured any of the lines of the Socayac rancho.

8th question. Where does the eastern line strike the Cosumnes river?

Answer. In the vicinity of what is known as Michigan Bar, perhaps a little below. This is my judgment.

9th question. How do you know this is the eastern line?

Answer. I know it only by my judgment of the distance, and by the judgment of others.

10th question. Do or not the lines above mentioned include lands worked by miners for gold?

Answer. The lands are not worked by miners. The bed and bars of the river have been mined. There is more or less gold in all that country.

11th question. Are you not interested in the Sheldon grant; and how much of said grant do you claim?

Answer. I held my purchase from the original grantee, a portion of the land claimed under said grant. The part held by me fronts half a mile on the river, and runs back the width of the tract; it is about three or three and a half miles from the eastern boundary of Sheldon's ranch.

12th question. Who marked the oak tree on the river of which you speak in your direct examination, and who told you that said tree marked the line between the Sheldon and Joaquin grants?

Answer. I do not know who marked the oak tree; I was informed by the old settlers that said tree was the corner on the river between said ranchos; among those from whom I obtained said information were William Daylor, José D. Sheldon and Perry McCoon.

13th question. How far is the hill by the oak tree above mentioned from Daylor's house?

Answer. About a half or three quarters of a mile. I stated in a former deposition in the Sheldon case that said hill rose above

sixty feet above the level of the river; from subsequent examination I now think it about eighty.

14th question. How do you know that the west line of the Socayac grant run a league from the river, and from whom did you derive your information?

Answer. I was so informed by the same persons named in my answer to question No. 12 and others; I do not know it upon any other authority.

15th question. Does not the river between the eastern and western lines run very crooked?

Answer. The river is not very crooked; it meanders like other streams, but has a general direction in descending from southwest to northeast.

16th question. Did you ever measure any of the outside boundaries of this grant?

Answer. I never did.

17th question. Is there anything on the map contained in the expediente referred to by you in your preceding examination which marks the rocky hill you spoke of as the starting point of the western boundary line?

Answer. I see nothing on said map to mark said hill, unless the dots on the map are intended to represent it.

18th question. When was the western line of this ranch first pointed out to you?

Answer. The exact time I do not recollect; it was either late in forty-six or early in forty-seven.

Re-examined by Claimant's Counsel.

1 question. Explain what you mean by what you say in answer to question 7 in your cross-examination, that you only knew the eastern line by your own judgment.

Answer. I meant to say that I know it by my own judgment and the information of others as in relation to the other boundaries; among those from whom I principally obtained my information were William Daylor, Jared D. Sheldon and Perry McCoon, all of whom are now dead.

JOHN P. RHODES.

Sworn to and subscribed before me, July 8th, 1854.

R. AUG. THOMPSON, *Com'r.*

U. S. law agent present, and cross-examined the witness.

R. AUG. THOMPSON.

Filed in office, July 8th, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 5, p. 50.

GEO. FISHER, *Sec'y.*

[REC. CLXXXIV, D. T., 1858.]—3

Deposition of G. F. Wyman.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *July 22, 1854.*

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, George F. Wyman, a witness on behalf of claimant, Emanuel Pratt, in case No. 235 on the docket of said board, and said witness being duly sworn, deposed as follows:

The U. S. law agent present.

Questions by Claimant's Attorney.

1st question. What is your name, age, and place of residence?

Answer. My name is George F. Wyman; my age 35 years; my residence San Francisco county, California.

2d question. Are you acquainted with the rancho known as Socayac; if yea, how long have you known it?

Answer. I am acquainted with it, and have known it as the rancho of Socayac since 1844. I knew the land and locality since the year 1841.

3d question. State what are its boundaries, and how long you have known them.

Answer. I became acquainted with the boundaries in the fall of 1844. It is bounded on the west by Sheldon's and Daylor's ranch, on the north by a high range of hills, on the south by the Cosumnes river, and on the east by a point of a ridge which runs down from the mountain, at a place called Three Peaks, where there are three hills higher than others in that neighborhood, to the river Cosumnes.

4th question. How are the boundaries ascertained and marked?

Answer. The starting point is a point of hill running down to the river; there are at that point, or near it, is an oak tree which was always considered the boundary between Sheldon and Chamberlain. It run thence northerly, or at right angles to the river. One league to a high ridge of hills there was a small heap of stones piled up to mark the corner; thence it runs along the range of hills east to or very near a place called the Three Buttes, or three hills higher than the neighboring hills; and from thence southeasterly to the river. One league is what it was designated for.

5th question. Look at the map filed in this case in the document marked "B Espediente," and state whether it is a correct delineation of the land, and what are the natural objects delineated on the north line.

(5th question objected to by law agent as leading.—P. L.)

Answer. It is a very good representation of the land. The natural objects marked here on the north line are points of hills higher than any others round there.

6th question. State whether you have been on the land ; if yea, how often, and what you know of its improvement and cultivation.

Answer. I have been on the land a great deal in all the years from 1841 to 1848, inclusive. I lived on it two years—from 1846 to 1848 ; Mr. Chamberlain built an adobe house on it in 1844, and lived on it, and made his home there—a field fenced in; in the spring of 1845 some wheat sowed and other seeds ; he had a garden ; he had stock on it; he had a blacksmith-shop and corral. I bought the stock for him and put it on the ranch in the spring and summer of 1845. Chamberlain continued there till the fall of 1846, and kept it cultivated, and continued making fence, and the place was after that kept in cultivation.

Cross-examined by the U. S. Law Agent.

1st question. How did you learn the boundaries in 1844?

Answer. They were pointed out to me, or made known to me by Daylor, Sheldon and Chamberlain.

2d question. When did you first know it by the name of Socayac, and what gave it that name ?

Answer. I knew it by that name as early as 1842. It was named so from a tribe of Indians of that name who lived on the Cosumnes river.

3d question. Where was their rancheria ?

Answer. It was in the foot of the hills on the river, about six miles above the western boundary of this ranch.

4th question. What was the extent of country to which this name was at that time applied ?

Answer. I do not know.

5th question. Who first pointed out to you the lines of the ranch in 1844?

Answer. Daylor, Sheldon, Chamberlain and I were all together, and they showed me.

6th question. What was the object of your going to look at the boundaries at that time ?

Answer. We were out hunting deer and antelope, I think, about November or December, along late in the fall of 1844. There was no special object as to the boundaries ; we were, in general, talking about ranchos, &c., and I inquired of them where their boundaries were ; they then went on to describe the boundaries to me and to show me.

7th question. Which of them described the boundaries ?

Answer. They all did ; one would talk a little while, and then another.

8th question. What part did each describe ?

Answer. They all described the whole of it. No particular part was described by one more than another of them ; they all had a say in it.

9th question. Did you hunt in company during that day, or separately?

Answer. We hunted in company; we were together all the time; we were out from about 10 o'clock a. m. to about 3 o'clock p. m.

10th question. Where did you hunt that day?

Answer. We hunted out on the prairie; from that up into the hills, and along back down to the river, and along the river home again.

11th question. Where did you first cross the line of the Socayac ranch?

Answer. Between Chamberlain's house and Daylor's. We started from Chamberlain's, and went to meet Daylor at his house to get him to go hunting.

12th question. How long was that after they had described this ranch to you?

Answer. It was about a half hour before they commenced describing it to me.

13th question. Was that description all the means of knowledge you have of the lines? if not, what other means of knowledge have you?

Answer. What they showed me and told me was all the means I had.

14th question. What did they show you?

Answer. They showed me tree, a little pile of rocks with a stick stuck up in the middle of it, the range of hills on the north, the three peaks about the northeast corner; and that was the way they showed the boundaries, and talking and telling me.

15th question. Was this all done on the day you speak of?

Answer. Yes.

16th question. Was it at Daylor's house?

Answer. No, it was not.

17th question. Where was it?

Answer. It was out in the prairie while we were hunting.

18th question. Was it on the ranch of Socayac?

Answer. Part of the time we were on it, part of the time off of it.

19th question. What part of the description was given while you were on the ranch?

Answer. I cannot say exactly.

20th question. Did you trace those lines you have mentioned; if yea, how?

Answer. No, we did not trace them throughout.

21st question. What part of them did you trace?

Answer. We first struck out to that part where the little pile of rocks was, the corner of it was called; thence we followed the hills along up in an easterly direction; we went over a hill a little higher than the general run of hills about there. Mr. Chamberlain ob-

served he thought his eastern line run thereabout. From there we went over another little rise; from there he showed the three peaks at the northeast corner.

22d question. How near did you go to those three peaks; how high are they and of what extent at their base?

Answer. I do not know how near I was to them that day; I do not know their height or extent at the base.

23d question. State, as near as you can, their height and extent at the base.

Answer. I know nothing about their height or size.

24th question. How far are they apart?

Answer. I do not know.

25th question. If you can form any idea, state about how far they are apart.

Answer. I cannot say.

26th question. Are they less than 10 miles apart?

Answer. I never measured the distance, and cannot swear about a thing I am so uncertain about. They are 3 buttes, tolerably close together; I have seen them, perhaps, thousands of times. I can swear that they are not less than one hundred yards apart, and not more than one hundred miles.

27th question. Did you ever trace the north line of the ranch; if yea, when and under what circumstances?

Answer. I have traced a portion of it, as I stated in my answer to 21st question, when we were out hunting.

28th question. What landmarks were there on that line to distinguish it?

Answer. There was a pile of stones with a stick stuck up in it, at the northwest corner; there is a range of hills higher than the neighboring hills; there were other artificial landmarks besides that of stones.

29th question. How far was the pile of stones from the river?

Answer. It was called and supposed to be one league.

30th question. Who placed it there, and for what purpose?

Answer. Messrs. Daylor, Chamberlain and Sheldon, I believe, were there, and placed it there to know the corner, I suppose, of their ranchos.

31st question. Is the north line of the ranch of Socayac straight or crooked?

Answer. If it run along the ridge, where I was told it run, it would be a little crooked, of course; its general course run parallel with the river, as I understood it.

32d question. Was the hunting excursion of which you speak, before or after the grant?

Answer. It was after the grant; or, at least, after they had told me it had been granted by Micheltorena.

33d question. Who told you that?

Answer. Sheldon, Daylor, and Chamberlain.

Re-examined by Claimant's Counsel.

1st question. Has there been any hard feeling manifested between you and the law agent on this cross-examination; if yea, on what account, and has it prejudiced you in your answers?

Answer. There has been no hard feeling that I am aware of; they may have been a little excited once, in regard to the distance apart of the 3 buttes; I do not know that it made much difference in my answer. I may have answered more correctly, or given a different answer from what I did give if there had been no excitement.

2d question. Were the boundaries of the ranch known to any one besides Daylor, Chamberlain, and Sheldon and yourself in 1844, at the time of which you have spoken?

Answer. Yes, the boundaries were generally known by all the neighbors.

3d question. Were they generally recognised and respected by the neighbors?

(3d question objected to by law agent as leading.—P. L.)

Answer. They were.

4th question. You say you knew it by the name of Socayac in 1842; did you know about what region of country it then *embrace*; if yea, did it embrace much more country than the present Rancho de Socayac?

Answer. The range of the Socayac Indians was called by that name without respect to any boundaries.

5th question. What has become of most of the persons who lived there and knew these boundaries of the ranch at that time?

Answer. Some are living, some are dead.

Cross-examination by U. S. Law Agent.

1st question. Who respected the claim of Chamberlain, and how did the neighbors respect it; were there any adjoining proprietors other than Sheldon to respect the claim?

Answer. It was respected by Sheldon, Daylor, Leidsdorff and others; they respected it by not interfering with it; Leidsdorff's land was near this, on the north; there were no adjoining proprietors that I know of, except the Sheldon ranch.

2d question. By what particular acts did each person respect the claim, so that you knew it to be so known and respected?

Answer. By their separating their cattle, I would know. The neighbors would meet on such occasions; if Daylor's cattle were on Chamberlain's land, he would go to Chamberlain and get him to come and see them separated, and so Chamberlain would do for Daylor.

G. F. WYMAN.

Subscribed and sworn before me, July 22d, 1854.

PETER LOTT, *Com'r, &c.*

Filed in office July 22, 1857.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 5, p. 201.

GEO. FISHER, *Sec'y.*

Deposition of John Bidwell.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *July 22d, 1854.*

This day came John Bidwell, a witness for claimant, Emanuel Pratt, No. 235, before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, and said witness being duly sworn, deposed as follows:

The U. S. law agent is present.

Questions by Claimant's Attorney.

1st question. What is your name, age, and place of residence?

Answer. My name is John Bidwell; my age 35 years; my residence Butte county, California.

2d question. Have you been examined as a witness in this case before? if yea, state what you know in regard to the boundaries of the rancho known as "Socayac," and also in regard to the map accompanying the petition to Micheltorena for a grant of the same, by John Chamberlain.

Answer. I have been examined twice before as a witness in this case; I was employed by John Chamberlain to make a map of the rancho known as "Socayac," in February, A. D. 1844, to accompany his petition to the governor for the land; I went upon the land in company with John Chamberlain and Mr. Daylor, who lived on the adjoining rancho and located the land called "Socayac," as follows: Commencing on the Cosumnes river at a certain tree near but just above a slough emptying into the river on the north side, and running up the Cosumnes river, in a direct line, three leagues, or fifteen thousand varas; thence running at right angles with the general course of the Cosumnes river, one league, or five thousand varas; thence down and parallel with the general course of said river to the eastern boundary of Sheldon's ranch; thence following Sheldon's boundary, one league, or five thousand varas, to the place of beginning, so as to contain three square leagues of land.

The map now shown me, contained in Espediente B filed in this case, is a correct copy of the original map which I made out for Chamberlain to present with his petition, and which I have seen filed in the office of the surveyor gen., and containing a correct general description of the land known as "Socayac."

2d question. Describe the natural objects mentioned or laid down on the map.

Answer. The north line of said ranch runs over a succession of high hills and spurs of hills which form the back ground, and are delineated on the map, and separate the water which runs into the American river from those which empty into the Cosumnes river. The three points represented by dots or marks just over the *u* in Cosumnes, and near the middle of said tract, are three buttes or isolated elevations in a valley as represented on the map. The extent and location of the said ranch were well known and recognised from the year 1844, until the country was taken possession of by the United States, as above indicated. I was requested by Micheltorena to make a map of Sacramento and San Joaquin valleys in the year 1844, which I delivered to Manuel Jimeno, secretary of the State. The above ranch of "Socayac" was then delineated by me upon said map, with the boundaries above mentioned; I have frequently testified in regard to this map which I made for Micheltorena before this old commission.

Cross-examined by U. S. Law Agent.

1st question. When did you first know the original grantee in this case, and where did he reside?

Answer. In 1841, at Sutter's Fort; he lived there till 1844 to my knowledge; after that he lived on the land claimed in this case.

2d question. How do you know he resided on said land in 1844?

Answer. I saw him there once in that year, and I frequently saw him when he would come to the fort, where I made my headquarters, from his ranch, and because it was generally known there that he was on his ranch.

3d question. What was he doing on his ranch that year, and what was his general business in 1844?

Answer. When I saw him on his ranch he had a small blacksmith shop there, and was making bridle-bits and spurs; he had some cattle and horses, and lived there; was just making or beginning on the ranch; his business was blacksmithing, but he had men to attend to his outdoor matters; he had a Mexican there taking care of his stock that year.

4th question. Have you not on a former occasion sworn that said Chamberlain was in the year 1844 one of the colonists of Sutter, and a resident in said colony?

Answer. I believe I have; I am quite sure it was that year; he went to make his improvement on the Cosumnes river; he frequently returned to the fort after that, and left persons on his ranch to take care of it; he kept it occupied.

5th question. Did he not make his headquarters at Sutter's establishment, as long as he lived in the country?

Answer. He made his headquarters there, but made his ranch as others did, and had it occupied; we all considered the fort our headquarters.

6th question. State what you know of Chamberlain having his ranch occupied, and by whom.

Answer. I knew he had a man there for vaquero named Salinas, and he had Indians whose names I did not know; I saw Salinas there in 1845, but I do not remember when he went there or when he left.

7th question. Do you know of your own knowledge of Salinas being on Chamberlain's place more than once?

Answer. No, I do not remember of seeing him there more than once.

8th question. How long did you see him there then, and how was he employed?

Answer. I saw him at the house; I merely passed the place.

9th question. Where did you make the map filed in this case?

Answer. At Sutter's Fort.

10th question. How often were you on the land before you made the map?

Answer. Only once when I went to sketch for the map—the day before I made the map, I think.

12th question. Did you then understand the Spanish language?

Answer. I did, tolerably well.

13th question. What gave the ranch its name?

Answer. It was the Indian's name.

14th question. What was its meaning?

Answer. I do not know.

15th question. What was it the name of?

Answer. I do not know.

16th question. *Have* you any instruments of measurement when you went to sketch the land?

Answer. No.

17th question. At what point did you start to make your survey?

Answer. I made no survey; I merely rode over the land and plotted it out by the eye.

18th question. What governed you in making your starting point?

Answer. Sheldon's ranch on the west, and the Cosumnes river on the south.

19th question. How did you ascertain the boundary of Sheldon's ranch on the west, and to what point of the compass did it extend towards the north?

Answer. The upper part of Sheldon's ranch was pointed out to me by Daylor and Chamberlain, which was marked by a certain deep gulch on the bank of the river. The exact direction of the line I cannot state, though I understand it to be about at right angles to the river; it would be in a northerly direction.

[REC. CLXXXIV, D. T., 1858.]—4

20th question. How far did you go up the Cosumnes river on that occasion?

Answer. I cannot now remember, but I believe about 10 miles.

21st question. Did you ascertain the dimensions of the land in any other way than by riding over it and sketching it down on paper; if yea, in what other manner?

Answer. In no other way.

22d question. How did you fix the northeastern and northwestern corners of the ranch?

Answer. I did not fix them at all, except to map them on the paper, so that they could afterwards be traced.

23d question. When were you last over the land?

Answer. In March, 1853.

24th question. How far did you fix the northeastern corner from the present mining settlement of Michigan bar?

Answer. I do not know where Michigan bar is; have visited a place of that name.

25th question. How far did you fix that corner from the first rocky point of hills on the north bank of the Cosumnes river above Pratt's house?

Answer. I never fixed any point; I could not fix it without actual measurement.

J. BIDWELL.

Subscribed and sworn to before me on this 22d day of July, A. D. 1854.

PETER LOTT, *Com'r, &c.*

Filed in office July 22d, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 5, p. 206.

GEO. FISHER, *Sec'y.*

“B.”—*Espediente.*

Espediente.

Promovido por el ciudadano naturalizado Dn. Juan Chamberlain en solicitud del terreno nombrado “Socayac.”

Note.—These papers were filed in the archives this 8th day of May, 1852, at the request of Judge Morse, who deposited them for that purpose.

Surv'r gen'l office, San Francisco.

S'R G'L.

Juan Augusto Sutter, juez de paz y comandante militar de la frontera nueva alvecia á los veinte y nueve dias del mes de Marzo del mil ochocientos cuarenta y seis, comparecieron en este juzgado los Señores Juan Marelino y Perry McCoon el primero vendiendo su casa ocho fanegas de trigo sembradas y el derecho de sus tierras de quince mil varas. Como consta por los documentos por el

gobierno al segundo por la cantidad de mil pesos en donde que daron conformes por parte de los dos.

Y para que conste me firme con los de asistencia.

J. A. SUTTER.

De ass'a : J. BIDWELL.

Ass'a : H. A. HEUBER.

Deposited in the archives of Judge Morse, 8th May, 1852.

SAM'L D. KING,

Surv'r Gen'l Cal.

Sello Cuarto—Dos Reales.

Habilitado provisionalmente por la aduana marítima del puerto de Monterrey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

Ex'mo S'or Gobernador:

Juan Chamberlain natural de los E. U. del norte y naturalizado en este territorio, ante V. E. con toda sumision y respecto se presenta y dice: que hallandose poseedor, de algunos bienes del campo y faltando un sitio para procrear los, he encontrado uno cerca del establecimiento del Señor Sutter, llamado "Socayac" y que consiste de quince mil varas, segun consta el adjunto diseño. Por tanto A. V. E. suplico humildemente que me conceda esta mi peticion por lo cual recibire merced y gracia.

Monterrey, 27 de Marzo de 1844. A ruego del interesado.

JORGE ALLEN.

Monterrey, Maro. 27, de 1844. Inf'e el S. s'rio del despacho tomando los que necesite.

MICHELTORENA.

Deposited in the archives by Judge Morse, 8 January, 1852.

SAMUEL D. KING,

Surv'r Gen'l.

Como dispone el ex'mo s'or gobernador pase la presedente instancia al S. Sutter para que informe sobre su contenido y despues diga lo que le ocurra al señor juez del pueblo de San José.

Monterrey, 27 de Marzo de 1844.

MANUEL JIMENO.

Ex'mo S'or: Al agregar á este expediente el documento que V. E. me previene por decreto del dia de ayer, veo que es un informe favorable al interesado y como el terreno que solicita esta valdío siendo el pretendiente hombre de bien, ocupandose en su oficio desde que se introdujo al pais segun los informes que he adquirido creo que no hay inconveniente alguno para que se le conceda pro-

vicionalmente el terreno que solicita, mientras V. E. pueda hacer la visita que ha dispuesto hacer por el Rio del Sacramento mas la disposicion de V. E. sera siempre lo mas acertado.

Monterrey, 30 de Marzo, de 1844.

MANUEL JIMENO.

Monterrey, Ab'l 1o, de 1844. Conforme.

MICHELTORENA.

[*For map or plan see original, page 49.*]

[7 S. D. K.]

A son Excellence Monsieur *Monsieur* Manuel Micheltorena, General de Brigade, Adjutant General de l'etat, Major de l'armee Mexicaine Republicaine de même, Gouverneur, Commandant General et Inspecteur des deux Californias.

MONSIEUR: Le porteur de la presente est Mr. J. Chamberlain, forgeron de son metier qui est depuis 2 aus et demi en mon service et connu comme un honnite homme tres util et maitre de son metier connue aussi d'un tres bon caractere Je prends la liberte de le accommander a la bienveillance de votre excellence ayant l'intention de devenir citoyen et puir votre excellence pour un petit terrain qui n'est pas occupe.

J'ai l'honneur á être de votre excellence tres humble et obeissant serviteur,

J. A. SUTTER.

Nueva Helvetia, les 19 Mars, 1844.

MONTEREY, 29 de M'zo, de 1844.

Agreguese al espediente del interesado.

MICHELTORENA.

Deposited in the archives by Judge Morse, 8 May, 1852.

SAM'L D. KING,
Surveyor Gen'l Cal'a.

A son Excellence Monsieur:

Monsieur Manuel Micheltorena, General de Brigade, Adjutant General de l'etat, Major de l'armee Mexicaine Republicaine de même, Gouverneur, Commandant General et Inspecteur des deux Californias a Monterey.

[8 S. D. K.]

Note by the surveyor general.—The following is a copy of the writing on the back of the letter copied on the previous sheet, No. 7.

SAM'L D. KING.

Manuel Micheltorena, Gen'l de Brigada del Ejercito Mexicano, Ayud'te Gen'l de la Plana Mayor del mismo, Ynspector del Departamento de Californias.

No pudiendo ahora por estar sumamente ocupado este gobierno

supremo departamental estender uno por uno los titulos respectivos a todos los ciudadanos que han solicitado terrenos con informe a su favor, del S'or Don Augusto Sutter, capitan y juez encargado de la jurisdiccion de Nueva Helvetia y Sacramento a nombre de la nacion Mexicana les confiero por estas letras la propiedad para ellos y sus familias de los respectivos terrenos marcados en sus instancias y diseños, a todos y a cada uno de los que hallan solicitado y obtenido informe favorable del espresado S'or Sutter h'ta hoy dia de la f'ha sin que nadie pueda disputarles su propiedad; sirviendoles una copia de este que les dara mas adelante el S'or Sutter de titulo formal, con el que se presentaran a este gobierno pa. estenderlos el mismo titulo en la debida forma y papel sellado correspondiente y pa. la debida constancia, en todos tiempos doy este documento que sera reconocido y acatado por todas las autoridades civiles y militares de la nacion Mexicana en este y en los demas departamentos autorizado devidamente como los sellos militares y de gobierno en Monterey a veinte y dos de Diciembre de mil ochocientos cuarenta y cuatro.

(Sig.)

MANUEL MICHELTORENA.

Certifico que es copia. Nueva Helvecia, Abril 5, de 1845.

J. A. SUTTER,

*Capitan y Mayor y Comandante Militar
de las fronteras del Norte.*

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican Territory or department of Upper California, do hereby certify that the ten preceding and hereunto annexed pages of tracing paper, numbered from one to ten inclusive, and each of which is identified by my initials, (S. D. K.) exhibit true and accurate copies of certain documents on file, and forming part of the said archives in this office.

In testimony, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this 12th day of May, 1852.

SAM'L D. KING,

Surveyor Gen'l Cal.

Filed in office May 21st, 1852.

GEO. FISHER, *Sec'y.*

“C.”—*Translation.*

Record of proceedings at the instance of the naturalized citizen John Chamberlain, petitioning for the tract called “Socayac.”

John Augustus Sutter, judge of the peace, and military coman-

dante of the frontier of New Helvetia. On the 29th day of the month of March, 1846, appeared before this tribunal Messrs. John Chamberlain and Perry McCoon, the first party selling his house and eight fanegas of wheat in sowings, as well as his right to his tract of fifteen thousand varas, as appears by official documents, to the party of the second part, for the sum of one thousand dollars, which is hereby acknowledged on the part of both.

In testimony whereof I certify these presents with the assisting witnesses. JOHN A. SUTTER.

Assisting witnesses:

J. BIDWELL,
H. A. HUBER.

Deposited in the archives by Judge Morse, 8th May, 1852.

SAMUEL D. KING,
Surv'r Gen'l Cal.

Stamp Fourth—Two Reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of Californias, for the years 1844 and 1845.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.] To the Most Excellent Governor:

John Chamberlain, a native of the United States of America, and naturalized in this Territory, with respect, before your exc'y, that being possessed of some cattle, and not having any land upon which he can breed the same, he knows of a tract near the settlement of Mr. Sutter, called "Socayac," containing 15 thousand varas, as will appear by the annexed plot; wherefore he prays humbly your exc'y to grant his petition, for which I shall receive a service and favor.

Monterey, March 27, 1844. At the request of petitioner.

GEORGE ALLEN.

MONTEREY, *March 27, 1844.*

Let the secretary of state report, taking such information as may be necessary.

MICHELTORENA.

Pursuant to the most exc't sir the governor's direction, the foregoing petition is referred to Mr. Sutter that he may take cognizance of the same, and report thereafter to the judges of the pueblo of San José.

Monterey, March 27th, 1844.

MANUEL JIMENO.

Deposited in the archives by Judge Morse 8th May, 1852.

SAMUEL D. KING, *Surv'r Gen'l.*

To the Most Exc't Governor:

At the time of annexing to the expediente the document that your exc'y refers to me by a decree of yesterday, I perceive that it is a report favorable to the party interested; and as the land solicited is vacant, and that the petitioner is an honest man, following his trade since he has been in this country, according to the best lights before me, I believe there is no objection to granting him provisionally the land which he prays for, until your exc'y shall have made the visit which you propose to make on the Sacramento river, but it should be as your exc'y may direct.

Monterey, March 30, 1844.

MAN'L JIMENO.

MONTEREY, *April 1st*, 1844.

Approved.

MICHELTORENA.

To his Excellency Manuel Micheltorena, Brigadier Gen'l, Adjutant Gen'l of the Staff of the Mexican Republican Army, Governor, Inspector, Gen'l, and Commandant of the two Californias.

SIR: The bearer of this is Mr. Chamberlain, a blacksmith by trade, who has been in my service for two years and a half; and as he is a useful man, proficient in his craft, and of good character, I take the liberty of recommending him to the favorable consideration of your excellency, it being his intention to become a citizen, and solicit from your excellency a small piece of land, which is unoccupied. I have the honor to be your excellency's humble and obedient servant,

J. A. SUTTER.

New Helvetia, 19 March, 1844.

Deposited in the archives by Judge Morse, 8th May, 1852.

SAMUEL D. KING,
Sr. Gen'l Cal.

Note by surveyor general:

The following is a copy of the writing on the *book* of the letter copied on the previous sheet, No. 7.

SAMUEL D. KING.

"To his Excellency Manuel Micheltorena, Gen'l of Brigade, Adjutant General of the Staff of the American Republican Army of the same, Governor, Commandante General and Inspector of both Californias, Monterey.

Manuel Micheltorena, Brig. Gen'l in the Mexican Army, Adjutant General of the Staff of the same, Governor, Commandant General and Inspector of the Department of the Californias.

131. The supreme departmental government, by reason of its many pressing duties, being unable at this time to issue, one by one, the requisite titles for all those citizens who have solicited

lands, upon the favorable report of Don Augustus Sutter, captain and judge of the district of New Helvetia and Sacramento, in the name of the Mexican nation, I grant them by these presents, and for them and their families, the ownership of the respective lands, as designated in their petitions and plats, to all and each of those who have petitioned and obtained a favorable report from the said Sutter, up to the date of these presents, and nobody shall dispute their said ownership. A copy of these presents, which shall be hereafter furnished *then* by said Sutter, shall answer as a regular title, with which they shall apply to this government, in order that the said title may be issued in the proper form on the stamped paper.

In evidence whereof, at all times, I issue these presents, which shall be recognised and respected by all the civil and military authorities of the Mexican nation, in this and the other departments, duly authenticated with the military and governmental seals.

MAN'L MICHELTORENA.

I certify the foregoing to be a true copy.
New Helvetia, April 5th, 1845.

J. A. SUTTER,
*First Captain and Military Commandant
of the frontiers of the north.*

E. C.
R. P.

I hereby certify the foregoing to be a true and correct translation of original Spanish and French documents in case No. 235, wherein Emanuel Pratt claims the place called "Socayac," now on file in this office.

In testimony whereof, I have hereunto signed my name at office of the sec'y to the U. S. land commission, San Francisco, this 27th day of March, 1854.

GEO. FISHER, *Sec'y.*

Filed in office May 21st, 1852.

GEO. FISHER, *Sec'y.*

D.—*Deed.*

This indenture, made this 25th day of November, A. D. 1850, between Perry McCoon, of Sacramento county, of the first part, and George McKinstry, of the same place, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of five thousand dollars to him in hand paid, the receipt of which is hereby acknowledged, has, and by these presents does, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all his right, title, and interest, of, and in, to the following tract of land, to wit: lying and being on the Cosumnes river, in the county aforesaid, and known as the rancho de "Socayac," and granted by

Micheltorena, governor of California, to John Chamberlain, together with the appurtenances thereunto belonging, or in anywise appertaining; to have and to hold the same to the said party of the second part, his heirs and assigns forever; and the said McCoon, for himself, his heirs, executors, administrators and assigns, covenants to and with the said party of the second part, his heirs and assigns, that he will forever warrant and defend the premises aforesaid against the lawful claims of all and every person or persons whomsoever, claiming or to claim from, by or under him or them.

In testimony whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

PERRY McCOON.

In presence of—

STATE OF CALIFORNIA,

Sacramento County, ss.

On this 25th day of November, A. D. 1850, personally before me, a justice of the peace in and for said county, Perry McCoon, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

Given under my hand at Sacramento city, this 25th day of November, A. D. 1850.

JOHN E. SACKETT,

Justice of the Peace.

Filed in office May 21st, 1852.

GEO. FISHER, *Sec'y.*

“D.”—*Transfer.*

This indenture, made and entered into this 28th day of October, A. D. 1850, by and between George McKinstry, jr., of rancho de Socayac, of the State of California, of the first part, and Emanuel Pratt, of the city of Sacramento, State aforesaid, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of five thousand dollars, cash in hand paid, the receipt whereof is hereby acknowledged by the said McKinstry, has bargained and sold, and by these presents do bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all the interest, right, title, and claim of the said party of the first part of, in, and to the tract, parcel, or piece of land lying and being on the Cosumnes river, State aforesaid, and known as the rancho “Socayac,” granted by Micheltorena, governor of California, to John Chamberlain, together with the appurtenances thereto belonging, or in anywise appertaining; to have and to hold the same to the said Pratt, his heirs and assigns, forever; and the said McKinstry for himself, his heirs and

[REC. CLXXXIV, D. T., 1858.]—5

assigns, covenants to and with the said Pratt, that he will forever warrant and defend the same against the lawful claims of all and every person whatsoever claiming under him.

In testimony whereof, the said party of the first part has hereunto set his hand and seal on the day and year aforesaid.

GE. MCKINSTRY.

In presence of—

E. J. ARMSTRONG.

STATE OF CALIFORNIA,
Sacramento county.

On this 11th day of November, A. D. 1850, personally appeared before me, a notary public, in and for said county, Geo. McKinsty, known to me to be the person described in, and who executed the foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes thereon mentioned.

Given under my hand and seal the day and year aforesaid.

GEO. S. FEAKE,
Notary Public Sac. city, Cal.

Filed Dec. 12, 1850, at 5 o'clock p. m., and recorded in book J of deeds, page 57, of records of Sac'o co., Cal.

L. A. BIRDSALL,
Recorder.

Filed in office, May 21, 1852.

GEO. FISHER, *Sec'y.*

Affidavit of John C. Hays.

STATE OF CALIFORNIA,
County of San Francisco, ss.

John C. Hays, of said county, being sworn, says he is surveyor general of said State, and keeper of the public archives thereof; that there is on file in his office an expediente of a tract of the rancho de "Socayac," issued by Micheltorena to Juan Chamberlain, dated December 22d, 1844; that there is endorsed thereon in the handwriting and over the signature of Samuel D. King, surveyor general: "Note.—These papers were filed in the archives this 8th day of May, 1852, at the request of Judge Morse, who deposited them for that purpose. Surveyor General's office, San Francisco.

"SAM'L D. KING, *Sur. Gen'l.*"

That he is acquainted with the signature of said Samuel D. King, and knows the one above mentioned to be his; that he was surveyor gen'l and keeper of said archives at the time said endorsement bears date; that said papers appear to have been filed at that time. And this deponent further says, that he holds said papers as part of the public archives in the surveyor general's office, and

that he refuses to permit them to be taken out of his possession for the purpose of being filed as evidence in a cause now pending before the U. S. land commissioners, wherein Emanuel Pratt is claimant for said rancho, and numbered 235.

JOHN C. HAYS.

Sworn and subscribed before me, this 18th day of August, A. D. 1854.

It is hereby stipulated that the foregoing affidavit may be used on the trial of this case, the same as if it were a deposition taken before the commissioner, and in the presence of the law agent, waiving oath.

August 21st, 1854.

J. H. McKUNE, *Law Agent.*

Filed in office, Aug. 21, 1854.

GEO. FISHER, *Sec'y.*

U. S. Land Commission.

EMANUEL PRATT
vs.
THE UNITED STATES. } No. 235.

It is hereby stipulated, that it will be admitted on the trial of this cause, that the original papers in this cause, of which "Expediente B," herein, is a copy, now filed by P. A. Morse, attorney for claimant, in the archives of the surveyor genl's office, on the 8th day of May, A. D. 1852.

July 29, 1854.

J. H. McKUNE, *Law Agent.*

Filed in office July 29, 1854.

(Signed)

GEO. FISHER, *Sec'y.*

Opinion of Board by Com'r Farwell.

EMANUEL PRATT
vs.
THE UNITED STATES. }

For a place called "Socayac," in the county of Sacramento, containing three square leagues.

This case is based upon a grant issued to Governor Micheltorena, on the 22d day of December, 1844, for the benefit of several persons that had previously made applications for grants, and had at that date received the proper recommendation from Capt. John A. Sutter, and in support of which claim the petitioner has offered in evidence a traced copy of an expediente of one John Chamberlain, dated the 27th day of March, 1844, together with the report of Capt. Sutter and the secretary of state, recommending the issue of the grant, and also a map of the land asked for, which documents are on file in the office of the surveyor general of the United States, and constitute a part of the records thereof.

The petitioner has also offered in evidence the following deeds of conveyance for the place in question, to wit: a deed from the grantee, John Chamberlain, to Perry McCoon, dated the 29th day of March, 1846, and from the said McCoon to George McKinstry, dated the 25th November, and from the said McKinstry to the present claimant of date October 28th, 1850, all of which said deeds are properly authenticated. The grant upon which this claim is based is one that has been denominated the general title, and has already received the consideration of this board, and been adjudged to be valid, and the proofs in the case are such as to leave no doubt that the application of the said Chamberlain for the place in question was one included in said grant.

The evidence also shows very certainly that the conditions of the grant were performed, and the boundaries sufficiently established so as to leave no difficulty in locating the land. We think this a valid claim, and a decree of confirmation will be entered herein.

(Confirmed.)

Filed in office July 10, 1855.

GEO. FISHER, *Sec'y.*

Decree.

EMANUEL PRATT }
vs.
THE UNITED STATES. }

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid, and it is therefore decreed that his application for a confirmation thereof be allowed.

The land of which confirmation is hereby given contain three square leagues, is called "Socayac," and is situated in the county of Sacramento, and bounded as follows:

Commencing on the Cosumnes river at a certain tree, near but just above a slough that empties into the river on the north side; thence up said river three leagues; thence at right angles with said river one league; thence down and parallel with the general course of said river three leagues, and from thence one league to the said river; reference being had to the plat accompanying the espediente and the deposition of J. Bidwell on file in this case.

R. AUG. THOMPSON,
S. B. FARWELL,

Commissioners.

Filed in office, July 10, 1855.

GEO. FISHER, *Sec'y.*

Order.

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the northern district of California,

it is hereby ordered that two transcripts of the proceedings and decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern judicial district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal' a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing sixty-two pages, numbered from 1 to 62, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 235 on the docket of the said board, wherein Emanuel Pratt is the claimant against the United States, for the place known by the name of "Socayac."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-first day of November, A. D. 1855,
[SEAL.] and of the independence of the United States of America the eightieth.

GEO. FISHER, *Sec'y.*

Endorsed : Filed December 1st, 1855.

JOHN A. MONROE, *Clerk.*

Notice of Appeal.

235.—"Socayac."

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 31st December, 1855.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of December, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: February 11th, 1856.

JOHN A. MONROE.
By W. H. CHEVERS.

Petition.

In the District Court of the United States for the northern district of California.

THE UNITED STATES }
vs. } D. C. 348.—L. C. 235.
EMANUEL PRATT. }

The United States, by their attorney, represents that this cause is an appeal from the decision of the board of U. S. land commissioners appointed to ascertain and settle the private land claims in the State of California; that the transcript of the record of proceedings before said commission was filed in this court November 1st, 1855; that a notice of appeal was filed February 11th, 1856; that the land claimed lies in the northern district, and that the claimant's title is invalid.

Wherefore appellants pray that the decision of the said land commission whereby the claim of the appellees was confirmed, may be reversed by this court and said claim be decreed invalid.

San Francisco, March 16th, 1857.

WM. BLEANDING,
U. S. Attorney.

Endorsed: Filed March 16th, 1857.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Decree.

At a stated term of the district court of the United States for the northern district of California, continued and held in and for the said district at the court-room of the said court, in the city of San Francisco, on Monday, the sixteenth day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES, Appellants, }
vs. } Decree No. 348.
EMANUEL PRATT, Appellee. }

No. 348. On appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of Cal'a.

This cause came on to be heard at a stated term of the court on appeal from the decision of the board of commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved March 3d, A. D. 1851, upon the transcript of the proceedings and decision of said commissioners, and it appearing to the satisfaction of the court that the said transcript has been duly filed, and the counsel for the respective parties having been heard, it is hereby ordered, adjudged and decreed, that the said decree be and the same is hereby in all things affirmed, and it is

likewise further ordered, adjudged and decreed, that the claim of said appellee is a good and valid claim, and that the said claim be and the same is hereby confirmed to the said appellee, Emanuel Pratt.

The land of which confirmation is hereby given contains three square leagues of land, is called "Socayac," and is situated in the county of Sacramento, and is bounded and described as follows: Commencing on the Cosumne river, at a certain tree, near but just above a slough that empties into the river on the north side; thence up said river three leagues; thence at right angles with said river one league; thence down and parallel with the general course of said river three leagues, and thence one league to the said river; reference being had to the plat accompanying the expediente, and the deposition of J. Bidwell on file in this case.

OGDEN HOFFMAN,

U. S. Dist. Judge.

Endorsed: Filed March 16th, 1857.

JOHN A. MONROE, *Clerk.*

By W. H. CHEVERS, *Deputy.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 24th day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
EMANUEL PRATT.

} D. C. 348.—L. C. 235.

In this case, on application of the United States attorney made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered at the present term, be and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed March 24, 1857.

JOHN A. MONROE, *Clerk.*

By W. H. CHEVERS, *Deputy.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 19th day of July, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable M. Hall McAllister, circuit judge.

THE UNITED STATES

vs.

D. C. 348.—L. C. 235.

EMANUEL PRATT.

In this case, on application of P. Della Torre, esq., U. S. attorney, it is ordered that an appeal in behalf of the United States from the final decision of the court, rendered in said court at the June, 1856, term, be and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay; and the appellants are ordered to serve the usual citation according to law.

M. HALL McALLISTER,

Judge Cir. Court U. S. districts of California.

Endorsed: Filed July 19th, 1858.

W. H. CHEVERS, *Clerk.**Citation.*

United States of America to Emanuel Pratt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington, on the first Monday in December next, pursuant to an order of appeal granted on the nineteenth day of July, A. D. 1858, by the Honorable M. Hall McAllister, circuit judge of the United States for the districts of California, and presiding over the district court for the northern district of California, in the discharge of its appellate jurisdiction over the decision of the board of commissioners for the settlement of private land claims in the State of California, in a certain suit wherein the United States are plaintiffs, and you are defendant, on appeal, to show cause, if any there be, why the decision in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal at San Francisco, this nineteenth day of July, in the year of our Lord one thousand eight hundred and fifty-eight.

M. HALL McALLISTER,

Judge Cir. Court U. S. districts of California.

Due service of copy within citation by U. S. marshal admitted this 30th day of July, A. D. 1858.

E. A. LAWRENCE,

Att'y for Claimant.

Endorsed: Filed July 30th, 1858.

W. H. CHEVERS, *Clerk.*

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed and foregoing pages, numbered from 0 to 73, both inclusive, contain a full, true, and correct transcript of the record

from the board of U. S. land commissioners, and of the pleadings, decree, orders and citation in said court, filed in this office in the case of The United States, appellants, v. Emanuel Pratt, appellee.

In testimony whereof, I have hereunto set my hand and affixed
[SEAL.] the seal of said court, this third day of August, A. D.
1858, and of our independence the 83d.

W. H. CHEVERS, *Clerk.*

Filed September 2, 1858.

SUPREME COURT OF THE UNITED STATES.

No. 174.

THE UNITED STATES, APPELLANTS,

vs.

TEODORO AND SECUNDINO ROBLES.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF
CALIFORNIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington, D. C.

SUPREME COURT OF THE UNITED STATES.

No. 174.

THE UNITED STATES, APPELLANTS,

vs.

TEODORO AND SECUNDINO ROBLES.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT
OF CALIFORNIA.

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GIBSON, Print.

Transcript of the proceedings in case No. 200—Teodoro and Secundino Robles, claimants, vs. The United States, defendant—for the place named “Rincon de San Francisquito.”

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal’ a.

Be it remembered, that on this twenty-seventh day of April, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Teodoro and Secundino Robles, for the place named “Rincon de San Francisquito,” was presented, and ordered to be filed and docketed with No. 200, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *December 30th*, 1852.

In case No. 200, Teodoro Robles and Secundino Robles, for the place named “Rincon de San Francisquito,” the deposition of José Abrego, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with documents marked H. J. T. Nos. 1 and 2, annexed thereto, was filed.

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *March 15*, 1853.

In the same case the deposition of José de la Cruz Sanchez, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *August 10th*, 1853.

Case No. 200, Teodoro and Secundino Robles, for the place named “Rincon de San Francisquito,” called, the counsel for the claimant read the evidence, argued and submitted, and taken under advisement,

SAN FRANCISCO, *November 29th*, 1853.

In the same case Commissioner Alpheus Felch delivered the opinion of the board confirming the claim.

(Vide page 26 of this Transcript.)

[REC. CLXXIV, D. T., 1853.]—1

Petition.

To the U. S. Land Commission for the ascertaining and settling of private land claims in California:

The petitioners, Theodoro Robles and Secundino Robles, respectfully represent to your honorable body, that heretofore, to wit, on the 23d of February, 1841, one José Penna made and presented his petition in writing to Don Castro, the prefect of the first district, soliciting for himself the grant of a tract of land, situate in the present county of Santa Clara, and known under the name of "Rincon de San Francisquito," a description of which will be given hereafter; that said Castro on the 28th of February, 1841, referred said petition to the administrator of the mission of Santa Clara in order to obtain his report thereon, who, on the 1st of March, 1841, referred said petition to the administrator of the mission of Santa Clara in order to obtain his report thereon, who, on the 1st of March, 1841, reported that said land was originally mission land, but was now unoccupied, and could well be granted to the petitioner; that said Castro thereupon transmitted all the proceedings taken in the matter to Governor Alvarado, who, on the 29th of March, 1841, by a decree under his signature, declared said José Peña the lawful owner of said land, and directed the proper document constituting title to be executed and delivered to said Peña; that said Peña having petitioned for a piece of land, including two small tracts of territory heretofore granted to one Francisco Estrada and one Antonio Buelna, purchased on the 19th of March, 1841, and on the 22d of March, 1841, all the right, title and interest which said Estrada and Buelna had or might have had under former grants to them; that on the 29th of March, 1841, a formal grant, under the signature of Governor Alvarado, issued to said José Peña, declaring him the legal owner of the said tract petitioned for, including the two small pieces above referred to. And your petitioners further say, that on the 10th day of September, 1847, said Peña conveyed and transferred all his right, title and interest in and to the land so granted to him to your petitioners, Teodoro Robles and Secundino Robles, who took possession thereof, and have always hitherto been in the quiet and undisputed possession of the same. And your petitioners further state, that the petition of said Peña, reference, report, decree, the various conveyances from Buelna and Estrada, a certified copy of the original grant and map on file in the archives of California, now in the possession of the surveyor general of the United States of America for the State of California, and that duly certified copies and translation of the same, are herewith submitted, and prayed to be made a part of this petition; that the original grant itself, and the conveyance of José Peña to your petitioners, are in the possession of your petitioners, and ready to be offered in evidence whenever required; that the said land is situated in the present

county of Santa Clara, is known under the name of "Rincon de San Francisquito," and is bounded, according to the terms of the grant, by the rancho of Donna Antonia Mesa, by the rancho of Don Antonio Buelna, by the rancho of Donna Guadalupe Briones, and by a range of hills, known as Lomas Divisorias, until they strike the point "Arrastradero," containing square leagues, more or less. And your petitioners further say, that said Peña was in the actual possession of said land from the time said grant issued to him until he made the conveyance above referred to to your petitioners, and that they have since then been in the uninterrupted possession and undisputed ownership thereof, and are not aware of the existence of any title conflicting with or paramount to their own. We therefore claim to be the lawful owners of said land, and pray that your honorable body will confirm and validate their claim and the title thereto.

CLARKE, TAYLOR & BECKH,
Att'ys for Petitioners.

Filed in office April 27th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Jose Abrego.

SAN FRANCISCO, *December 30th, 1852.*

On this day, before Commissioner Harry J. Thornton, came José Abrego, a witness in behalf of the claimants, Theodora Robles and Secundio Robles, petition No. 200, and was duly sworn, his evidence being interpreted by the secretary.

The United States associate law agent was present.

Questions by Claimants.

Question 1st. What is your name, age and place of residence?

Answer. My name is José Abrego; I am forty years old, and reside in the city of Monterey.

Question 2d. Look at the two documents now shown you, the one purporting to be an original grant from Juan B. Alvarado to Don José Peña of the land named Rincon de San Francisquito, dated Monterey, 29th March, 1841, which said document marked Exhibit 1 is attached to your deposition and now filed in this cause; the other a conveyance of said land from José Peña to José Theodoro Robles and Secundino Robles, witnessed and signed by Ignacio Alviso, Eusebio Galindo, Diego Alexander Forbes and Augustin Desforges, dated mission of Santa Clara, 10 of September, 1847, which said document, marked Exhibit 2, is also attached to your deposition and filed in this cause. State if you are acquainted with the handwritings of Juan B. Alvarado, Manuel Jimeno, José Peña, Ignacio Alviso, Eusebio Galindo, Diego Alex. Forbes and Augustin Desforges; and if so, whether the signatures attached to said original documents are the genuine signatures of said persons respectively?

Answer. I see the two documents referred to in your question; I am acquainted with all of the handwritings of Juan B. Alvarado, Manuel Jimeno, José Peña, Ignacio Alviso, D. A. Forbes and Augustin Desforbes; I know them to be genuine; Eusebio Galindo has no signature, but put only his mark.

JOSÉ ABREGO.

United States law agent present.

Sworn to and subscribed before me, this 30th December, 1852.

HARRY J. THORNTON,
Commissioner.

Filed in office December 30th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Jose de la Cruz Sanchez.

SAN FRANCISCO, *March 15th*, 1853.

On this day, before Commissioner Hiland Hall, came José de la Cruz Sanchez, a witness in behalf of the claimants, Teodoro Robles et al., petition No. 200, and was duly sworn, his evidence being interpreted by the secretary.

The United States law agent was present.

Questions by Claimant.

Question 1st. What is your name, age and place of residence?

Answer. My name is José de la Cruz Sanchez; my age fifty-six years, and I reside on my rancho of San Rafael, in San Francisco county.

Question 2d. Do you know the land claimed in this petition? if so, state what you know in regard to its occupancy.

Answer. I have known it some twelve or fourteen years ago; it was then occupied by Manuel Peña, who resided upon it and used it for agricultural and grazing purposes; from him it passed to Alexander Forbes, who lived upon and occupied it in the same way; Forbes sold it to the present occupant, I think, some seven or eight years ago, who have lived upon and cultivated it ever since, up to the present time.

JOSÉ DE LA CRUZ SANCHEZ.

Sworn and subscribed before me.

HILAND HALL,
Commissioner.

Filed in office March 15th, 1853.

GEO. FISHER, *Sec'y.*

Espediente promovido por el ciudadano José Peña en solicitud del paraje conocido con el nombre de Rincon de San Francisquito.

1841.

230.

[2 S. D. K.]

B.—*Espediente.*

S'or Prefecto del Primer Distrito:

José Peña con el debido respeto que debe ante la superioridad de V. S. espone y dice: que des de el día cuatro de Junio del año de 1837, tiene solicitado el rincon de San Francisquito y despues de haber tomado el sor. gobernador informe del sor. alcalde del pueblo de San José Guadalupe q' e lo hera Dn. Juan Alvinos, al año entrante solicito el finado Rafael Soto d'ho paraje poniendose este a sembrar sin conocimiento del sr. administrador, y como falleció, el mencionado Soto, la viuda no quizo perder lo que su esposo habia trabajado pero atendiendo el Sor. Dn. José Castro á la primacia que me assiste de mi solicitud y de mis pocos meritos, me propuso que con tal de que yo no perjudicara á la esposa del finado Soto, q' e biera en donde me gustaba que se me amejoraria el sitio, pues d'ha Señora no solicitaba mas de las puras tierras de labor hasta unas paredes viegas, pero se le aumentó cosa de unas trecientas varas mas, que llegan sus limites hasta el ortigal; el Señor Antonio Buelna podra decir si es verdad lo que llebo espuesto. En atencion a lo que se me permitio he solicitado desde el arroyito de las Lleguas hasta colindan con los Sres. Macsimo Martinez, Antonio Buelna, la viuda Antonia Meza, y por la parte del sur con el neofito Gorgonio: pero el S'or Macsimo Martinez, biendo que yo solicite este sitio se presento al gobierno pidiendo el que se le aumentara el terreno con el fin de quitarme seis ú ocho suertes de tierra siendo asi que el parage que poseo hora de dos, pues mal se considera que necesita de mas terreno cuando el aumento que ha conseguido, se lo ha ecsedido á la Señora Guadalupe Briones. En tal virtud de que se me ha quitado el aumento que á d'ho s'or se le ha hecho, solicito de la vondad de V. S. se me aumente el terreno desde el arroyito de las Lleguas que son los limetes, hasta el primer saucelito que queda para la parte del este. Por el diseño que es adjunto puede V. S. quedar enterado de mi solicitud. Por tanto.

A. V. S. pido provea á favor del suplicante de que recibira merced y gracia. Juro no ser de malicia.

S'ta Clara, Feb'o 23, de 1841.

JOSÉ PEÑA.

S. JUAN DE CASTRO, *Feb'o 28, de 1841.*

Informe el adm'or del establecimiento de S'ta Clara lo que juzque

combeniente, con referencia de todas las razones q' e espone el solicitante.

CASTRO.

Sr. Prefecto del 1o Distrito:

En cumpli'to al decreto q' e antecede, debo decir q' e el terreno q' e se pretende en esta solicitud, no lo ocupa el estableci'to de mi cargo y ni aun le es necesario, por lo cual puede concedersele al pretendiente, por lo q' e respecta al pedazo de tierra mas de aumento q' e el solicitante pretende, se le puede conceder por no perjudicar á ninguna persona, pues aunque esta comprendido en el diseño de Dn. Franc'o Estrada quedó esté sor. en mi presencia de cederselo á Dn. José Peña, V. S. sin embargo resolvera lo q' e crea mas justo.

STA. CLARA.

Marzo 1o de 1841.

IGNO. ALVISA.

[4 S. D. K.]

Ba en papel comun, por no haber en este lugar del sello que corresponde.

EXMO. SR: Don José Peña en la adjunta instancia solicita de la bondad de V. E. se le conceda el terreno conocido con el nombre de Rincon de S. Francisquito.

Esta Prefectura, visto el informe del adm'r de Sta. Clara, cree puede V. E. si fuere de su superior agrado, beneficiar á Peña, quien p'r sus buenas circunstancias y numerosa familia es digno del patrocinio de V. E.

El aumento q' e tambien solicita me consta q' e Don Francisco Estrada está pronto á cederselo. Esta es la opinion de esta prefectura q' e espresa gustosa á la sup'd de V. E.

JOSÉ T. CASTRO.

[5 S. D. K.]

MONTEREY, 29 de Marzo de 1841.

Vista la peticion con que da principio este esped'te el informe del encargo del estable'to de Sta. Clara, y el del s'or prefecto del 1o distrito, con todo lo demas que se tubo presente y ver convino, de conformidad con leyes y reglamentos de la materia, declaro á D. José Peña dueño en propiedad del paraje conocido con el nombre de Rincon de San Francisquito, colindante con el rancho de D'a Ant'a Meza, con el terreno de D'n Antonio Buelna, con el D'a Guadalupe Briones, con las Lomerias hasta el punto con el nombre de arrastrado y linderos del terreno de D'n Franc'o Estrada, librése el despacho correspon'te tomese razon de el en el libro respectivo y derijan este esped'te á la ex'ma junta departamental para su aprovacion. El S'or D'n Juan B. Alvarado gob'r constitucional departamento de las Californias asi lo mandó, decreto, y firmó, de que doy fé.

[7 S. D. K.]

Digo yo Franc'co Estrada q' e por este me obligo á cederle á D'n José Peña el pedazo mas de aumento de tierra que solicita como consta en su solicitud y diceño y para que conste le doy el presente documento en el establec'to de Sta. Clara á diez y nueve de Marzo de mil ochocientos cuarenta y uno.

FRANCISCO ESTRADA.

Sertifico ser colindante con D'n José Peña del terreno que ocupa por la parte de abajo del Chamisal asi al norte y por la parte de arriba la S'ra Guadalupe Briones, para los fines que contengan doy este en Sta. Clara á los 22 dias del mes de Marzo de 1841.

ANTONIO BUELNA.

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto D'n José Peña ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Rincon de San Francisquito, colindante con el rancho de D'a Ant'a Meza, con el terreno de D'n Antonio Buelna, con el D'a Guadalupe Briones, con las Lomerias, hasta el punto conocido con el nombre de Arrastradero, hasta colindar con el terreno de D'n Franc'co Estrada: practicadas previamente las diligencias y averiguaciones concernientes, segun lo dispuesto por leys y reglamentos, usando de las facultades que me son conferidas á nombre de la nacion Mexicana, he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras y sugeto á la aprovacion de la E. junta departamental y á las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutara libre, y esclusivamente destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa y estara habilitada.

2a. Solicitara del juez respectivo que le de posesion juridica en virtud de este despacho, por el cual se demarcaran los linderos, en cuyos limites pondra á mas de las mojoneras algunos arboles frutales ó silvestres de halguna utilidad.

3a. El terreno de que se hace mencion es de de ganado mayor poco mas ó menos, segun esplica el diceño respectivo. El juez que le diere la posesion lo hara medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraviniere á estas condiciones perdera su derecho al terreno y sera denunciabile por otro.

En consecuencia mando que teniéndose por firme y valedero este título se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey á veinte y nueve de Marzo, de mil ochocientos cuarenta y uno.

JUAN B. ALVARADO.

MANUEL JIMENO, S'rio.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify, that the ten preceding and hereunto annexed pages of tracing paper, numbered from one to ten inclusive, and each of which is verified by my initials (S. D. K.), exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal (not having a seal of office), at the city of San Francisco, Cal., this sixth day of April, 1852.

SAMUEL D. KING,

Surveyor Gen'l, Cal.

Filed in office April 27th, 1852.

GEO. FISHER, *Sec.*

Espediente.—Record of Proceedings.

At the instance of the citizen José Peña, soliciting the land known by the name of "Rincon de San Francisquito."

1841.

230.

To the honorable prefect of the 1st district: José Peña, with due respect, before Y. H., exposes and says, that since the 4th day of June, 1837, he has solicited the "Rincon de San Francisquito," and after the governor had taken information from the alcalde of the pueblo of San José de Guadalupe, who was Mr. Juan Alvarez, the deceased, Rafael Soto, solicited in the following year said place, putting it under cultivation without the administrator's knowledge, and as the said Soto died, the widow did not wish to lose what her husband had worked; but Sr. Dn. José Castro, considering the precedence that favors me in my solicitation and my small services, he proposed to me that, provided I should not prejudice the widow of the deceased Soto, I might look for the better place that pleased me, for said lady did not solicit more than the only cultivated land to some old walls, but they increase it about 300 varas more, which reach to the "ortogal," (nettle growth). Mr. Antonio Buelna will be able to say whether what I have exposed be true. In consideration of what they promised me, I have solicited the lands from the Noroyebo de las Teguas (brook of the Mares) to the boundaries of Messrs. Maximo Martinez, Antonio Buelna, the widow of Antonio Mesa; and southward, those of the neophyte Gorgorio; but Mr. Maximo Martinez, seeing that I solicited this place, presented himself to the government, asking that the land might be given to him, with the view of depriving me of 6 or 8 parcels of land

(suerte de tierra), it being the case that the land I possessed was two suertes; for it is wrongfully considered, that he needs more land when the enlargement he has obtained has been ceded to Mrs. Guadalupe Briones. For the reason that they have deprived me of the enlargement they have made to said gentlemen, I solicit from your honor's goodness to award me the land from the Arroyito de Teguas, which are the limits to the first sausalito (willow grove) that remains towards the east. By the adjoined sketch your honor may be informed of my solicitation. Therefore I ask your honor to confer this favor upon your petitioner, whereby he will receive mercy and grace. I swear there is no malice in it.

Santa Clara, February 23d, 1841.

JOSÉ PEÑA.

SAN JUAN DE CASTRO, *February 28th*, 1841.

Let the administrator of the establishment of Santa Clara report what he thinks convenient with reference to all the points set forth by the petitioner.

CASTRO.

To the Prefect of the 1st District :

In compliance with the preceding decree, I have to say that the land solicited in this petition is not occupied by the establishment in my charge, nor even is it necessary ; wherefore it can be granted to the petitioner. As regards the piece of land in addition that the petitioners solicit, it may be held that it is not to the prejudice of any person, for, though it is comprised in the sketch of D. Franco. Estrada, this gentleman agreed, in my presence, to cede it to Mr. José Peña, notwithstanding your honor will resolve what you believe most just.

Santa Clara, March 1st, 1841.

IGNACIO ALVIREZ.

It is written on common paper, not having in this place the corresponding stamped one.

MOST EXC'T SIR : Don José Peña, in the adjourned instance, solicits of your exc'y's goodness to grant him the land known by the name of "Rincon de San Francisquito." This prefecture having seen the report of the administrator of Santa Clara, believe your exc'y can, if it should be your sup'r pleasure, benefit Peña, who, for his good qualities and numerous family, is worthy of your exc'y's patronage. The addition that he also solicits it is evident to me that Mr. Francisco Estrada is ready to grant it to him. This is the opinion of this prefecture, which it submits to your excellency's superior opinion.

Monterey, 29th March, 1841.

JOSÉ CASTRO.

Having seen the petition with which this espediente commences the report of the person in charge of the establishment of Santa

[REC. CLXXIV, D. T., 1858.]—2

Clara, and that of the prefect of the 1st district, with every thing else that was borne in mind, and was convenient to look into in conformity with laws and regulations upon the matter, I declare Don José Peña owner in fee of the place known by the name of "Rincon de San Francisquito," bordering upon the rancho of Da. Ant'a Meza, with the land Dn. Antonio Buelna, with that of Da. Guadalupe Briones, with the high lands, to the point known with the name of Narastrado, and boundaries of the land of Don Francisco Estrada. Let the proper patent be delivered, enter it in the respective book, and direct this record of proceedings to the most ex't departmental assembly for its approbation. S'or Don Juan B. Alvarado, constitutional governor of the department of both Californias, thus ordered, decreed and signed, which I certify.

Map.

I, Francisco Estrada, say that I hereby oblige myself to cede to Don José Peña the additional piece of land he solicits as it appears in his petition and sketch; and in order to make it evident, I give the present document in the establishment of Santa Clara on the 19th of March, 1841.

FRANCISCO ESTRADA.

[Remark.—The elliptical construction of the Spanish certificate allows of four different translations, of which the following seems to be the best.]

I certify that I am a bordering neighbor with Don José Peña in the land which he occupies on the lower part of the Chamisal towards the north, and with Señora Guadalupe Briones, in that which she occupies on the upper part. For the end which may be convenient, I give this in Santa Clara on the 22 March.

(Signed)

ANTONIO BUELNA.

Juan B. Alvarado, Constitutional Governor of the Department of both Californias.

Whereas Don José Peña has solicited, for his personal and his family's benefit, the land known by the name of "Rincon de San Francisquito," bordering upon the rancho of Dn. Ant'a Mesa, and the land of Don Antonio Buelna, and that of Dn. Guadalupe Briones, on the high lands, to the point known by the name of Arrastradero, bordering together with the land of Dn. Francisco Estrada, after previously having taken the proper steps and made investigations according to the requirements of laws and regulations, in exercise of the powers vested in me in the name of the Mexican nation, I have concluded to grant him the mentioned lands, declaring unto him the ownership of it by these present letters, and subject to the approbation of the E. departmental assembly, and to the following conditions:

1st. He may fence it without prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, appropriating it to the use and culture that may best suit him; but within one year he shall build a house to be inhabited.

2d. He shall solicit of the respective judge to give him juridical possession in virtue of this document, by whom the boundaries are to be defined, on which extremities he will set, besides the landmarks, some fruit trees, or wild ones of some usefulness.

3d. The mentioned land is of de ganado mayor, a little more or less, as the respective sketch shows. The judge who may give the possession will cause it to be measured conformable to ordinance, leaving the surplus that may result to the nation for convenient purposes.

4th. If he should violate these conditions he shall lose his right to the land, which may be denounced by any other party.

Consequently I order that this title-deed being held as firm and valid, it be entered in the respective book, and delivered to the interested party for his security and other purposes.

Given in Monterey on the 29th of March, 1841.

JUAN B. ALVARADO.

MANUEL JIMENO, *Secretary.*

E. C. R. P.

Filed in office April 27th, 1852.

GEO. FISHER, *Sec'y.*

[*For map see original, between pages 17 and 18.*]

Document H. H. No. 1, annexed to the Depo. of Jose Abrego.

Sello 1o—Seis Pesos.

Habilitado provisionalmente por la aduana maritima de Monterey para los años de 1839 y 1840.

ANTONIO MA. OSIO.

ALVARADO.

Valga p'a los años de 1841 y 1842.

ALVARADO.

ANTONIO MA. OSIO.

{ Ad'a Marit'a }
{ de Mont'y. }

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto D'n José Peña há pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de rincon de San Francisquito colindante con el rancho de D'a Antonia Meza, con el terreno de D'n Antonio Buelna, con el de D'a Guadalupe Briones, con las Lomerias, hasta el punto conocido con el nombre de Arrastradero, hasta colindar con el terreno de D'n Francisco Estrada; practicadas previamente las delijencias y averiguaciones

concernientes, segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la nacion Mexicana he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, sujetandose á la aprovacion de la ex^{ma} junta departamental y á las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travesias, caminos, y servidumbres, lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa y estara habilitada.

2a. Solicitara del juez respectivo que le de posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra á mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace mencion es de la estencion que demuestra el diseño que corre en el espediente. El juez que diere la posesion lo hara medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraviniere á estas condiciones perdiera su derecho al terreno y sera denunciabile por otro.

En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de él en el libro respectivo, y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á veinte y nueve de Marzo de mil ochocientos cuarenta y uno.

JUAN B. ALVARADO.

MAN'L JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro de acientos sobre adjudicacion de terrenos valdios, á fecha 3 v'te.

JIMENO.

El ex^{mo} señor gobernador dispone se tome razon de este titulo en la prefectura del 1er. distrito.

JIMENO.

En cumplim'to del anterior superior decreto tomese razon.

CASTRO.

Queda tomada razon de este titulo en el libro respectivo á f'ha 2.

Prefectura del 1er. distrito, Abril 7, de 1841.

MAN'L CASTAÑARES, *S'rio.*

Queda trasladado este titulo á favor de los S^{res} Leandro Robles y José Teodoro Robles, segun escritura de venta otorgada por mí hoy dia de la fecha diez de Set'e, 1847.

JOSÉ PEÑA.

EUSEVIO GALINDO, *As'a.*

AGUSTIN DESFORGES, *As'a.*

Exhibit No. 1 to deposition of Abrego in No. 200.

H. J. T.

Filed in office, December 30th, 1853.

GEO. FISHER, *Sec'y.*

Translation of Doc. H. J. T. No. 1, annexed to Depo. of Jose Abrego.

First Stamp—Six dollars.

Provisionally authorized by the maritime custom-house of Monterey, for the years 1839 and 1840.

(Signed) ALVARADO.

(Signed) ANTONIO MA. OSIO.

Revalidated for the years 1841 and 1842.

(Signed) ALVARADO.

(Signed) ANTONIO MA. OSIO.

{ Custom-house
Stamp. }

Juan B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas, as Don José Peña has petitioned, for his personal benefit and that of his family, the tract of land known by the name of "Rincon de San Francisquito," bounded by the rancho of Doña Antonia Meza, by the land of Don Antonio Buelna, by that of Doña Guadalupe Briones, by the ranges of the hills as far as to the point known by the name of "Arrastradero," until reaching the land of Dn. Francisco Estrada, all the steps and investigations concerning thereto having been first taken as required by laws and regulations, exercising the powers conferred upon me, in the name of the Mexican nation, I have granted him the said tract, declaring to him the ownership thereof by these presents, to be subject to the approval of the m't excell't departmental board (junta) and to the following conditions:

1st. He may fence it, without injuring the passages, roads and servitudes; may enjoy it freely and exclusively, appropriating it to such use or cultivation as may suit him best; but within one year he shall build a house, and it shall be inhabited.

2d. He shall apply to the proper officer to give him juridical possession by virtue of this title, by whom the boundaries shall be marked out, at the limits of which he shall place, besides the landmarks, some fruit or useful forest trees.

3d. The tract of land of which mention is made is of the extent as shown by the sketch annexed to the espediente. The officer who may give the possession shall cause it to be measured according to ordinance, the surplus thereof to remain to the nation for convenient purposes.

4th. If he shall contravene these conditions he shall forfeit his right to the tract, and shall be liable to be denounced by another.

Wherefore I order that, this title being held firm and valid, entry

thereof be made in the proper book, and the same be delivered to the party concerned, for his safety and other ends.

Given in Monterey, on the 29th day of March, 1841.

(Signed)

JUAN B. ALVARADO.

(Signed) MANUEL JIMENO, *Sec'y.*

Entry of this title is made in the book of registry *an* adjudication of vacant lands, at fo. 3 and over.

(Signed)

JIMENO.

His excellency señor governor directs that entry of this title be made in the office of the prefect of the 1st district.

(Signed)

JIMENO.

In pursuance of the foregoing superior order, let an entry be made.

(Signed)

CASTRO.

Entry of this title is made in the proper book, at fol. 2.

Office of the prefect of the 1st district, April 7th, 1841.

(Signed)

MAN'L CASTAÑARES, *Sec'y.*

This title is transferred unto Señores Secundino Robles and José Teodoro Robles, according to a deed of sale executed by myself this day, of the date the 10th of September, 1847.

(Signed)

JOSÉ PEÑA.

Witness:

(Sig.) EUSIBIO GALINDO.

(Sig.) AUGUSTIN DESFORGES.

I certify that the foregoing is a true and correct translation of a Spanish document being marked "Doc. H. J. T. No. 1, annexed to deposition of José Abrego, taken before Commissioner Harry J. Thornton, in case No. 200, wherein Teodoro and Secundino Robles claim the Rincon de San Francisquito," now on file in this office.

In testimony whereof, I have hereunto signed my name.

Office of the United States land commission to ascertain and settle private land claims in California, at San Francisco, this 19th day of November, A. D. 1853.

Document No. 2, annexed to the Depo. of Jose Abrego.

En la mision de Santa Clara, á los diez dias del mes de Setiembre de mil ochocientos cuarenta y siete, ante mi Ignacio Alvisu, juez de paz auxiliar de la jurisdiccion de San José de Guadalupe, y ante los testigos de mi asistencia con quienes actuo en forma debida, comparecio Dn. José Peña cuya persona, mayor de edad, doy fé conosco; y dijo que por si y á nombre de sus hijos herederos, y susesores, y de quienes de ellos hubiese titulo, voz y causa en cualesquiera mayera, vende y dá en venta solemne y enaguacion perpetua todo el terreno comprendido en el titulo de consecion con que fue agraciado por el gobierno departamental, en f'ha veinte y nueve, de Marzo de mil ochocientos cuarenta y uno, á que se refi-

ere, y tambien vende todo el ganado que actualmente posee el otorgante, en d'ho sitio, cuyo numero deberá pasar de doscientas cabezas, la casa ó casas, huertas corrales, y todo y cada una de las fincas que en d'ho terreno hubiere, á los Señs. José Teodoro Robles y Secundino Robles. Y declara y asegura el enunciado Dn. José Peña que no tiene vendido, empeñado, ni enagenado el dicho sitio, conocido por el nombre del Rincon de San Francisquito, y tanto el terreno como las fincas, y bienes, estan libres de todo gravamen perpetuo, temporal, especial, general, tacito y expreso: y como tal se los vende en precio y cantidad de tres mil y quinientos pesos fuertes, que le tienen entregado los compradores; y el otorgante ha recibido a su entera satisfaccion. Y asi mismo declara y asegura que su justo precio y verdadero valor del enunciado rancho con los bienes y fincas que tiene son los mencionados tres mil y quinientos pesos y que no vale mas: y que en caso que mas valga ó valer pueda del exceso en poca ó mucha suma, lo hace á favor de los compradores y de sus herederos, y sucesores, gracia y donacion pura, perfecta é irrevocable, que en derecho se llama intervivos, con insinuacion y demas firmezas legales, con la circunstancia que se lo entregara á los mencionados Sres. José Teodoro Robles y Secundino Robles, el empresado rancho ó terreno con todos sus bienes movientes y semovientes dentro de cinco dias de esta f'ha: Y los compradores, han condescendido.

Y el enunciado Dn. José Peña renuncia las leyes que tratan de contratos compras y ventas, truegues ó cambios; y de otras en que hay lesion en mas ó menos de la mitad del justo precio: Y, que desde el tiempo estipulado en adelante para siempre jamas, se desapodera, quita y aparta y á sus hijos herederos y sucesores del dominio, propiedad, posesion, titulo, voz, recurso y otros cualesquiera derechos que le competa al enunciado rancho del Rincon de San Francisquito. Lo cede, renuncia y tras pasa en las personas de los compradores y en quienes les representan para que lo posean, gocen cambien, enajenen, usen y dispongan de ello á su eleccion como de cosa suya adquirida con justo y legitimo titulo y á la observancia de todo lo referido, se obliga el referido Dn. José Peña con sus bienes habidos y por haber: y con ellos se somete á los sres. jueces y justicias que de sus causas deban y puedan conocer conforme á d'ro; para que á su cumplimiento le compelan y apremien como por sentencia definitiva, consentida y pasada en cosa juzgada; que por tal la recibe y renuncia todas las leyes que en el caso le favorezcan.

En cuyo testimonio lo firmo conmigo y los testigos en papel simple el dia y mes arriba citados, de que doy fé.

JOSÉ PEÑA.

YGNACIO ALVISU, *Juez Auxiliar.*

Ta

AGUSTIN DESFORGES.

EUSEBIO GALINDO,

DIEGO ALEX' O FORBES.

A fojas siento veinte y dos del libro de asientos aparese la escritura de compra echa por el apoderado Dn. Diego Forbes por los S' res Robles y para resguardo del comprador se estien este sertificado á 14 de Julio de mil ochocientos cuarenta y nueve.

ANT'O MA. PICO, *Alcalde.*

Exhibit No. 2 to deposition of Abrego in No. 200.

H. J. T.

Filed in office Dec'r 30th, 1853.

GEO. FISHER, *Sec.*

Translation of Doc. H. J. T. No. 2, annexed to Deposition of Jose Abrego.

In the mission of Santa Clara, on the 10th day of the month of September, 1847, before me, Ygnacio Albisu, assistant justice of the peace of the jurisdiction of San José de Guadalupe, and before my accompanying witness, with whom I act according to law, appeared Don José Peña, which person, who is full age, I certify to know, and stated, that for himself, and in the name of his children, heirs and successors, and of which of them he may have right, power and authority in any way whatsoever, he hereby sells and grants, in solemn sale and perpetual alienation, all the tract of land mentioned in the title of concession, wherewith he was granted by the department government, dated the 29th day of March, 1841, which the same refers to; and also he hereby sells all the cattle which he, the said J. Peña, actually possesses in the said place, the quantity of which will be above two hundred head, the house or houses, orchard, corrals, and all and every property that there is in the said place, unto Señores José Teodoro Robles and Secundino Robles; and the said Don José Peña hereby declares and assures that he has not sold, mortgaged, or alienated the said place known by the name of "Rincon de San Francisquito," and the land, as well as the possession and property, are free from all incumbrances, perpetual, temporal, especial, general, tacit, and express, and as such he sells them for and in consideration of the sum of three thousand and five hundred hard dollars, which the vendees have already paid to him, and the said J. P. has received to his full satisfaction, and likewise he declares and assures that the said 3,500 are just price and real value of the said rancho, and the possessions and property therein, and they are not worth more, and that in case they should or may be worth more of the overplus, whether in great or small sum, he makes unto the said purchasers, their heirs and successors, a grant and donation, pure, perfect, and irrevocable, which in laws is called *interviros*, with the production thereof, and other legal securities, with the condition that the said ranch or tract of land, together with all the chattels and cattle stock, shall be delivered within five days from this date unto the said Señores José Teodoro

Robles and Secundino Robles, and the said vendees have agreed thereto. And the said Don José Peña hereby renounces the laws bearing on contracts, purchases and sales, barter or exchange, and others bearing upon frauds in sale more or less of the moiety of the just price, and that from the period stipulated, henceforward and forever, he dispossess himself of, quits and withdraws himself and his children, heirs and successors, from the domain, fee, possession, right, title and resources, and any other rights whatsoever pertaining to the same, the said rancho of Rincon de S. F., which he yields, renounces and transfers unto the persons of the vendees, or whom may act for them, that they may possess, enjoy, barter, alienate, use and dispose thereof at their discernment, as their own property acquired by right and legitimate title; and for the observance of all above mentioned, the said D. J. P. binds himself, and his estate had and to be had, and therewith he submits to the courts and justice, who ought and may cognize of such a case according to law, in order that, for the fulfilment thereof, they may judge and compel him as by a definitive judgment, and passed to a tried case, and as such he shall admit it, and renounce such law which may favor him in the case.

In testimony whereof, he signed his name hereunto with myself and the witnesses, it being on common paper, the day and month first above mentioned, which I attest.

(S'g)

JOSÉ PEÑA.

(S'g) IGNACIO ALVISO,
Assis't Justice of Peace.

Witness:

Witness:

EUSEBIO GALINDO,

AGUSTIN DESFORGES.

(S'g) DIEGO ALEX. FORBES.

At folio 122 of the book of reg'ty there appears the deed of purchase made by Don Diego Forbes, attorney of Sen's Robles, and for the safety of the vendee this certificate is made the 14th day of July, 1849.

(Sig.)

ANTONIO MA. PICO, *Alcalde.*

Opinion of the Board.

TEODORO ROBLES and SECUNDINO ROBLES	} For the tract of land
vs.	
THE UNITED STATES.	called "Rincon de San Francisquito."

The petitioners allege that the land for which they ask a confirmation was granted by the government to José Peña, through whom they claim title by his conveyance to them. They have given in evidence a traced copy of the espediente, showing that said Peña presented his petition for the land to the prefect of the first district, February 23d, 1841; that information was obtained in the usual

[REC. CLXXIV, D. T., 1858.]—3

manner and transmitted to Governor Alvarado, who, on the 29th March of the same year, made the concession and issued the grant, the original of which, duly proved, is filed in the case. There is no evidence of approval by the departmental assembly, nor is there any proof of juridical possession.

The deposition of José de la Cruz Sanchez shows that said Peña occupied the premises, residing thereon, and using the land for agricultural and grazing purposes, as far back, at least, as the year in which the grant was made; that Alexander Forbes succeeded him and lived on the premises, occupying it in the same way, and that some seven or eight years ago the present claimant purchased the property of said Forbes, and have lived upon and cultivated it ever since. A deed of conveyance of the land made by said Peña, directly to the claimant in the case, is introduced and proved, bearing date the 10th day of September, 1847.

The land granted is described by metes and bonds, and by reference to the map and to the limits of the surrounding tracts mentioned in the grant as boundaries, it is believed a survey of it can be made with little difficulty.

The claim appears to be meritorious, and it is therefore confirmed.

Filed in office November 29th, 1853.

GEO. FISHER, *Sec'y.*

Decree of Confirmation.

TEODORO ROBLES and SECUNDINO ROBLES

vs.

THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioners is valid, and the same is therefore hereby confirmed. The land of which confirmation is hereby made is the place known by the name of "Rincon de San Francisquito," being the same on which said claimants now reside, and bounded and described as follows, to wit: Bounded on the northwardly side by the rancho of Doña Antonia Mesa, by the land of Don Antonio Buelna, and by that of Doña Guadalupe Briones; on the west side by the range of hills from the land of said Guadalupe Briones to the point known by the name of "Arastradero;" on the south side by said "Arastradero" until it reaches the land of Francisco Estrada; and thence by said Estrada's north line to the east end of the same; and on the east side by the bay to the south line of the rancho of said Antonia Mesa first mentioned, at the southeast corner thereof. The limits of the land hereby confirmed to be subject to the settlement and location of the said lines of the ranchos and lands above mentioned, as the same has been defined and settled by juridical survey, or as the same shall be defined and settled under confirmations by this commis-

sion, or, in default of both, as the same were understood and settled at the time of the grant of the premises hereby confirmed to José Peña on the 29th day of March, 1841. Reference to be had to said grant, and also to the map or plan of said premises on file in this case, attached to and forming a part of the traced copy of the espediente, duly certified from the office of the United States surveyor general for California.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office November 29th, 1853.

GEO. FISHER, *Secretary.*

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal' a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-seven pages, numbered from 1 to 27, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 200 on the docket of the said board, wherein Teodoro and Secundino Robles are claimants against the United States, for the place known by the name of "Rincon de San Francisquito."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this twenty-third day of August, A. D. 1854,
[SEAL.] and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed August 23d, 1854.

JOHN A. MONROE, *Clerk.*

Notice of Appeal.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 30th November, 1854.

TEODORO AND SECUNDINO ROBLES }
vs. } 200.
THE UNITED STATES. }

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day

of August, 1854, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General*.

Endorsed: Filed January 8th, 1855.

JOHN A. MONROE, *Clerk*.

Petition.

To the honorable District Court of the United States in and for the northern district of California.

THE UNITED STATES, Appellants, }
vs. } No. 81.
TEODORO AND SECUNDINO ROBLES. }

The petition of the United States by their attorney represents, that this cause is an application for a review of the decision of the board of commissioners whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court, on the 1st day of January, 1855; that a notice of appeal was filed on the first day of January, 1855, and that the land claimed lies in the said district; that the said claim is invalid.

Wherefore the appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,

A. GLASSELL,

Ass't U. S. Att'y.

Endorsed: Filed June 27th, 1855.

JOHN A. MONROE, *Clerk*.

By W. H. CHEVERS, *Deputy*.

Answer.

District Court of the United States, northern district of California.

THE UNITED STATES, Appellants, }
vs. } No. 81.—L. C. docket No. 200.
TEODORO Y SECUNDINO ROBLES. }

Teodoro and Secundino Robles, appellees and claimants in the above entitled case, in answer to the petition therein filed, aver and say, that their title to the land therein claimed is valid.

They therefore pray that the decision of the board of land commissioners be affirmed, and the title of the said claimants be decreed to be valid.

J. CLARKE, *Att'y for Claimants*.

Endorsed: Filed June 27th, 1855.

JOHN A. MONROE, *Clerk*.

By W. H. CHEVERS, *Deputy*.

Opinion by his honor Judge M. H. McAllister.

THE UNITED STATES, Appellants, }
 vs.
 TEODORO ROBLES and SECUNDINO }
 ROBLES, Appellees. }

The appellees claim through a mesne conveyance from Alexander Forbes, whose title is derived from one Don José Peña, the grantee.

The grant was issued to the said Peña by Governor Alvarado on the 29th March, 1841, and was for a tract of land known by the name of "Rincon de San Francisquito," bounded by the rancho of Doña Antonio Meza, by the land of Doña Guadalupe Briones, by the ranges of the hills as far as to the point known by the name of "Arastradero," until reaching the land of Don San Francisco Estrada. The third condition describes the land to be of the extent as shown by the sketch annexed to the espediente.

The genuineness of the grant, the original of which was before the commissioners, is established, and the parol testimony ascertains the occupancy of the land by the grantee from the year in which the grant was issued, its subsequent occupation by Forbes at the time of his purchase from the grantee until some eight years ago, when latter sold to the appellees, since which period they have lived on and cultivated the premises. A deed of conveyance from Forbes for the property is in evidence. The only objections to the claim are, the want of approval by the departmental assembly, and the failure to obtain judicial possession.

These cannot, under the circumstances of this case, avail to defeat the claim. The decision of the commissioners must be therefore affirmed.

Decree.

THE UNITED STATES }
 vs. } No. 81.
 TEODORO ROBLES and SECUNDO ROBLES. }

Stated term, October 29th, 1855.

Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause coming on to be heard at a stated term of this court on an appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the proceedings and decision, and the papers and evidence on which said claim was founded; and it appearing to the court that such transcript has been duly filed according to law, and counsel for both parties having appeared, it is ordered, adjudged

and decreed, that said decision be affirmed; and it is further ordered, adjudged and decreed, that the claim of the appellees be confirmed to the tract of land known as "Rincon de San Francisco," being the same on which appellees now reside, and bounded and described as follows, viz: On the northwardly side by the rancho of Doña Antonia Mesa, by the land of Don Antonio Buelna, and by that of Doña Guadalupe Briones; on the west side by the range of hills from the land of said Guadalupe Briones to the point known as "Arastradero;" on the south side by said "Arastradero" until it reaches the land of Francisco Estrada; and thence by said Estrada's north line to the east end of the same; and on the east side by the bay to the south line of the rancho of said Antonia Mesa, first mentioned, at the southeast corner thereof. The limits of the land hereby confirmed to be subject to the settlement and location of the said line of the ranchos and lands above mentioned as the same have been defined and settled by juridical survey, or as the same have been defined and settled under confirmations by the said board of commissioners and by this court, *as*, in default of both, as the same were understood and settled at the time of the grant of the premises hereby confirmed to José Peña on the 29th day of March, 1841. Reference to be had to said grant, and also to the map or plan of said premises on file in this case, attached to and forming a part of the traced copy of the expediente, duly certified from the office of the United States surveyor general for California.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed October 29th, 1855.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order Granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the courtroom, in the city of San Francisco, on Tuesday, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES	}	D. C. 81.—L. C. 200.
vs.		
TEODORO AND SECUNDINO ROBLES.		

In this case, on application of the United States attorney, made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered at the present term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions and pro-

ceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed March 24th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order Granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the courtroom, in the city of San Francisco, on Wednesday, the thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES	}	D. C. 81.—L. C. 200.
v.		
TEODORO AND SECUNDINO ROBLES.		

In this case, on application of P. Della Torre, esq., U. S. attorney, it is ordered that an appeal in behalf of the United States from the final decision of the court, rendered in said court at the June, 1855, term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay, and the appellants are ordered to serve the usual citation according to law.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed July 1st, 1858.

W. H. CHEVERS, *Clerk.*

United States of America to Teodoro and Secundino Robles, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington on the first Monday in December next, pursuant to an order of appeal granted on this thirtieth day of June, A. D. 1858, in open court, by the district judge of the district court of the United States for the northern district of California, in a certain suit, wherein the United States are plaintiffs and you are defendant, on appeal, to show cause, if any there be, why the decision in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal, at San Francisco, this thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

OGDEN HOFFMAN, [SEAL.]
U. S. Dist. Judge.

Endorsed: Due service of copy within admitted this 2d day of July, 1858.

J. CLARKE, *Att'y for Clmt.*

Filed July 2, 1858.

W. H. CHEVERS, *Clerk.*

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed and foregoing pages, numbered from one to forty, both inclusive, contain a full, true, and correct transcript of the record from the board of U. S. land commissioners, and of the pleadings, opinion, decree, orders and citation in this court filed in this office in the case of The United States, appellants, v. Teodoro and Secundino Robles, appellees.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this third day of July, A. D. 1858,
[SEAL.] and of our independence the 82d.

W. H. CHEVERS, *Clerk*.

Filed 2d August, 1858.

SUPREME COURT OF THE UNITED STATES.

No. 191.

THE UNITED STATES, APPELLANTS,

vs.

MARIA MANUELA VALENCIA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT
OF CALIFORNIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington, D. C.

SUPREME COURT OF THE UNITED STATES.

No. 191.

THE UNITED STATES, APPELLANTS,

vs.

MARIA MANUELA VALENCIA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF
CALIFORNIA.

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GIDEON, Print.

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this thirteenth day of December, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Maria Manuela Valencia for the place named "Boca de Cañada del Pinole," was presented, and ordered to be filed and docketed with No. 490, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *March 30, 1853.*

In case No. 490, Maria Manuela Valencia, for the place named "Boca de Cañada del Pinole," the deposition of Juan B. Alvarado, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with document marked H. J. T., Exhibit A, annexed thereto, was filed.

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *Feb. 14, 1854.*

In the same case the deposition of Vicente Miramontes, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *May 2d, 1854.*

Case No. 490 was called, submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *May 16, 1854.*

In the same case Commissioner Thompson Campbell delivered the opinion of the board, rejecting the claim.

(Vide page 13 of this Transcript.)

SAN FRANCISCO, *Aug. 15, 1854.*

In the same case, on motion of the U. S. law agent, the following order was made, to wit:

(Vide page 17 of this Transcript.)

Petition.

To the honorable the Commissioners for ascertaining and settling private land claims in the State of California.

The petition of Doña Maria Manuela Valencia respectfully
[REC. EXCR, D. T. 1858.]—1

represents: That on 21st day of June, A. D. 1842, Juan B. Alvarado, constitutional governor of the department of the Californias, granted to your petitioner in accordance with law, and under certain conditions specified in said grant, to which reference is hereby made, the tract of land known under the name of "Boca de Cañada del Pinole," adjoining and continuous with the rancho of Don Ygnacio Martinez, with that of Julian Wil, and with that of Don Candelario Valencia; said tract containing three square leagues, (x res sitios de ganado mayor,) more or less, and situated in the county of Contra Costa.

Petitioner represents that she has complied with all the requirements and conditions of said grant, as set forth in said grant, which is hereto annexed.

Petitioner further represents, that there is no claim interfering with her rights to her knowledge, and that she has had the uninterrupted possession of said tract from the time the grant was made (having been put in possession by the proper officer) up to this time.

Petitioner therefore prays that her claim may be examined, and that the said tract of land, as described herein and in the annexed grant, may be confirmed; and, as in duty bound, your petitioner will ever pray.

JAS. NAUTREE,
Att'y for Maria M. Valencia.

Filed in office Dec. 13th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of J. B. Alvarado.

Claim No. 490.

SAN FRANCISCO, *March 30, 1853.*

On this day, before Commissioner H. J. Thornton, came Juan B. Alvarado, a witness on behalf of the claimant, Maria Manuela Valencia, petition No. 490, and was duly sworn, his evidence being interpreted by the secretary.

Questions by Claimant's Counsel.

1st question. What is your name, age, and place of residence?

Answer. My name is Juan Bautista Alvarado; I am forty-three years of age, and reside in San Pablo Contra Costa.

2d question. You are here shown the original grant of three leagues, more or less, of land, to Doña Maria Manuel Valencia, known as Boca de la Cañada del Pinole, executed on the 21st day of June, 1842, and marked A, and hereunto annexed. Please state whether the signatures of yourself, that of your secretary, Man'l Jimeno, that of José Maria Castanares, that of Estrada, and that of Antonio Maria Pico, are genuine or not?

Answer. I have made the grant myself; my signature thereto is

genuine. All the other signatures I know; I have seen them often; have seen Jimeno, Pico, Castanares, and Estrada write, and I know that their signatures to this deed are genuine.

2d question. Was Doña Maria Ma. Valencia in possession of this land granted to her, long before this deed was made to her; if so, how many years?

Answer. It is to my knowledge that she has been in possession of this land previous to the year of 1831, eighteen hundred and thirty-one.

2d question. Is she now, and did she always, occupy said land, and is she still in possession of said land?

Answer. She has always occupied, and is now occupying, said land.

JUAN B. ALVARADO.

U. S. law agent present.

Sworn to and subscribed before me this 30th of March, 1853.

HARRY J. THORNTON, *Com'r, &c.*

Filed in office March 30, 1853.

GEO. FISHER, *Sec'y.*

Deposition of Vicente Miramontes.

UNITED STATES LAND COMMISSION,
San Francisco, Feb. 14, 1854.

On this day, before Com'r Alpheus Felch, came Vicente Miramontes, a witness in behalf of the claimant, Maria Manuela Valencia, case No. 490, who, after being duly sworn, deposed as follows, his evidence being interpreted by the secretary.

Questions by Mr. Nautree, Attorney for Claimant.

1st question. Please state your name, age, and place of residence.

Answer. My name is Vicente Miramontes; my age is forty-four years; and I reside in the county of S. Francisco.

2d question. Do you know Maria Manuela Valencia? If yea, how long have you known her?

Answer. I know her, and have known her about thirty years.

3d question. Where does she live, and how long has she lived in that same place?

Answer. She lives in the rancho Boca de Cañada Pinole; she has lived there since the year 1831, according to my knowledge of it.

4th question. To what use does she put that rancho?

Answer. She has it occupied with stock, and cultivates a portion of the land, and has an orchard enclosed of about one hundred and fifty varas square. She has cultivated the land and raised a crop every year since she has occupied the place.

5 question. Has she ever occupied any other place since she established that rancho?

Answer. She has not; that is the only one she has occupied.

6 question. Has she a house or houses on the land? If so, how many?

Answer. She had, three years ago, two adobe houses on the place. I do not know how many she has now. She has a large family, and some of her children are married, and are living on the same rancho.

VICENTE MIRAMONTES.

Mr. Greenhow, associate law agent, was present at the taking of the deposition, but propounded no questions.

Subscribed and sworn to before me this 14th day of February, 1854.

ALPHEUS FELCH,
Commissioner.

Filed in office February 14th, 1854.

GEO. FISHER, *Secretary.*

A.—*Grant.*

Sello Primero—Seis Pesos.

Habilitado provisionalmente por la aduana maritima de Monterey para los años de 1842 y 1843.

ANTONIO MA. OSIO.

ALVARADO.

[SEAL.]

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto Da. Ma. Manuela Valencia ha pretendido para su beneficio personal y el de su familia el parage conocido con el nombre de la Boca de la Cañada del Pinole, colindante con el rancho de Don Ygnacio Martinez con el de Julian Wil y con el de Don Candelario Valencia practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por las leyes y reglamentos usando de las facultades que me son conferidas á nombre de la nacion Mexicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras sugetandose a la aprovacion de la ex^{ma} junta departamental, y a las condiciones siguientes:

1o. Podra cercarlo sin perjudicar las travecias caminos y servidumbres lo disfrutara libre y esclusivamente destinandolo al uso o cultivo que mas le acomode debiendo ocupar la casa que tenga fabricada.

2o. Solicitara del juez respectivo que le de posesion en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mojoneras algunas señales nesesarias.

3o. El terreno de que se hace donacion es de tres sitios de ganado mayor poco mas o menos segun esplica el diseño respectivo. El juez qe. le diere la posesion lo hara medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos qe. mas le convengan.

4o. Si contraviniere á estas condiciones perdiera su derecho al terreno y sera denunciabile por otro.

En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de el en el libro respectivo de asientos sobre adjudicaciones de terrenos valdios y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á veinte y uno de Junio de mil ochocientos cuarenta y dos.

JUAN B. ALVARADO.

MAN'L JIMENO, *Secretario.*

Queda tomada razon de este despacho en el libro de asientos sobre adjudicaciones de terrenos valdios á fojas 14.

JIMENO.

El Exmo. Señor gobernador ha dispuesto se tome razon de este titulo en la prefectura del primer distrito.

JIMENO.

Tomese razon.

ESTRADA.

Queda tomada razon de este sup'r titulo en el cuaderno respectivo de esta oficiria á fojas 7 frente.

Monterey, Junio 22 de 1842.

JOSÉ MARIA CASTAÑARES,
Scrio. Into.

Filed in office Dec'r 13th, 1852.

GEO. FISHER, *Sec'y.*

B.—*Translation of A.*

Stamp First—Six Dollars.

Provisionally authorized by the maritime custom-house of Monterey for the years 1842 and 1843.

ANTONIO MA. PICO.

ALVARADO.

[SEAL.]

Juan B. Alvarado, Constitutional Governor of the Department of California.

Whereas Mrs. Maria Ma. Valencia has petitioned for her personal benefit, as well as for that of her family, a tract of land known by the name of La Boca de la Cañada de Pinole, being bounded by the rancho of Mr. Ygnacio Martinez, by that of Julian Wil and Mr. Candelario Valencia:

All the steps and investigations concerning thereto having been first had as required by laws and regulations, in exercise of the powers granted to me, in the name of the Mexican nation, I have granted to the said Ma. Mana. Valencia the above mentioned tract of land, declaring to her the ownership thereof by these presents, to be subject to the approval of the most honorable the departmental board, and under the following conditions:

1st. She may fence the same without detriment to the crossings, roads and easements, to enjoy it freely and exclusively, devoting it to such use or cultivation as best suits her, and to occupy a house which is to be erected thereon.

2d. She shall solicit the proper officer to give her judicial possession by virtue of this title, by whom the boundaries shall be marked out, at the limits of which she is to place besides the landmarks some other usual marks.

3d. The land granted as aforesaid is of three square leagues, (sitios de ganado mayor,) more or less, as shown by the sketch of the same. The officer who may give her the possession shall cause the same to be measured according to ordinance, the surplus thereof to remain to the nation for other convenient purposes.

4th. If she contravene these conditions, she shall forfeit her right to the land, and will be liable to be denounced by another.

Therefore, in order that this title being held firm and valid, a record thereof be made in the respective book on adjudication of government lands, and afterwards let it be delivered to the interested party for her security and other purposes.

Given at Monterey on the twenty-first day of June, eighteen hundred and forty-two.

(Signed)

JUAN B. ALVARADO.

MANUEL JIMENO, *Secretary*.

A record of this title has been made in the book of registry on adjudication of government lands, at folio 14.

JIMENO.

His excellency the governor has directed that a record of this title be made in the office of the prefect of the first district.

(Signed)

JIMENO.

Let a record be made.

ESTRADA.

A record of this title has been made in the proper book kept in this office on page 7.

Monterey, June 22, 1842.

JOSÉ MA. CASTAÑARES,
Secretary ad interim.

Filed in office December 13th, 1852.

GEO. FISHER, *Secretary*.

[*For map see original, page 13.*]

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and, as such, now having in my office and under my custody a portion of the archives of the former Spanish

and Mexican Territory or department of Upper California, do hereby certify that the preceding and hereunto annexed page of tracing paper exhibits a true and accurate copy of a map, being part of the expediente entitled Expediente promovido por Doña Maria Manuela Valencia en pretencion del parage nombrado "Boca de la Cañada del Pinole," año de 1842, "284," now on file and forming a part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) [SEAL.] at the city of San Francisco, Cal., the 31st day of January, 1853.

SAMUEL D. KING,
Surveyor General Cal.

Filed in office Feb'y 25th, 1853.

GEO. FISHER, *Secretary.*

Opinion of the Board.

MARIA MANUELA VALENCIA }
vs. }
THE UNITED STATES. }

The Rancho de la Boca del Pinole—Three leagues.

The petitioner in this case, for the purpose of deducing title to the land described in her petition, has placed on file the original grant made by Governor Alvarado on the 21st day of June, A. D. 1842, together with a traced copy of a map taken from the surveyor general's office of the United States for the State of California.

The certificate of the surveyor general, which accompanies said map, contains the statement that it (the map) is a part of the expediente in that case.

The foregoing documents are both proven to be genuine, and embrace all the documentary evidence adduced by the petitioner in this case.

There is no proof that any judicial possession of the premises were ever given, or that any approval of said grant was ever made by the departmental assembly.

The depositions on file show a long residence on the land by the grantee, and establish very clearly a substantial compliance with the conditions of the grant, and the only obstacle to a confirmation of the claim is to be found in the proof of boundaries.

The grant is in the usual form, and with the usual conditions attached, and contains the following descriptions of the land granted. The tract of land is known by the name of the mouth of the Pinole Valley, "coterminous" with the rancho of Don Ygnacio Martinez, with that of Julien Wil, and with that of Candelario Valencia. The 3d condition of the grant assigns the quantity granted as being three square leagues, as explained by the respective map, and provides for a sobrante. There being no evidence

adduced that any segregation of the land intended to be granted was ever made, the question presents itself whether the description given in the grant, together with the description given on the map, which, by reference, is made a part of the grant, sufficiently describes the land so as to effect its separation from the other lands of a like character, without the aid of the judicial measurement provided for in the third condition, and whether the grant itself is intended to be by metes and bounds.

A careful examination of the map referred to will show that it is not more specific than the grant, with the single exception of giving the points of the compass. The map has no scale of distances laid down, and consequently we can have no means of knowing the extent of country intended to be embraced within the delineations of boundary as there made.

The map represents the rancho of Dn. Ygnacio Martinez as bounding on the north and northeast, the rancho of Julian Wil as bounding on the east, and the rancho of Candelario Valencia as bounding on the south. There is no designation of boundary of any kind on the west side, and there are no natural objects laid down as boundary marks.

For aught that appears on the map, the delineation might embrace only three square leagues, and it might embrace fifty. This commission has no means of ascertaining.

It has heretofore been decided that in cases where no judicial measurement had been made, and where, too, a sobrante was provided for, if, from all the papers in the case, it was made to appear that the grant was one by metes and bounds, if the description was sufficiently specific, a decree of confirmation could be entered; but in the case under consideration no such intention can be inferred from the documents on file; on the contrary, I think it is very clearly shown, that it was the intention to grant the specific quantity of three square leagues, and that the same should be taken within the limits as defined on the map, reserving the residue to the nation. If the boundaries were clear and specific, and there was a scale of distances as laid down on the map, by which the quantity might be ascertained with a reasonable degree of certainty, and it appeared that the boundaries did not contain more than the quantity granted, then a segregation by judicial measurement might be dispensed with.

But in the case before us no such means can be resorted to, and the party has failed to give us any oral testimony on the subject. If it were true that the boundaries as delineated on the map contained no more than three square leagues, the quantity granted, that fact is certainly susceptible of proof, and it devolved upon the petitioner to show it.

This commission has frequently taken occasion to advert to the necessity and importance of the kind of proof just referred to, and

the absolute necessity of showing by some means that the boundaries within which the party claims do not contain more than her grant calls for, must be apparent to all.

There can be no more clear proposition presented than when the government of Mexico expressed in precise terms the exact quantity which was intended to be granted to be three square leagues, the party could not take six or ten under the clause, a little more or less.

The quantity granted was material, and the government provided a way for ascertaining that quantity, and, notwithstanding there was no regular scientific government surveyor, the rude measurement which was made of lands that were granted, by an officer responsible to the government for his acts, and who was bound by his oath to protect the public domain and guard the law from violation, secured just as effectually the segregation of the land granted, and fixed the quantity, not perhaps with the same precision and certainty, but near enough for all practical purposes. The terms more or less were, no doubt, inserted in view of the rude and uncertain means which the government at that day was compelled to adopt in the absence of a more scientific mode of making surveys of the public lands.

We therefore think that in the grant under consideration was clearly not intended to be made by metes and bounds, without regard to quantity; and as no proof has been produced by which the exact quantity embraced in their given limits can be ascertained, the claim for confirmation must be denied for the want of a sufficient description of the land.

The claim is therefore rejected.

Filed in office May 16th, 1854.

GEO. FISHER, *Secretary.*

Decree.

MARIA MANUELA VALENCIA
vs.
THE UNITED STATES. }

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is not valid, and it is therefore decreed that her application for a confirmation of the same be denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office June 7th, 1854.

GEO. FISHER, *Secretary.*

[REC. CXCI, D. T. 1858.]-2

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney Gen'l of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing seventeen pages, numbered from 1 to 17, both inclusive, to contain a true, correct and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 490 on the docket of the said board, wherein Maria Manuela Valencia is the claimant against the United States, for the place known by the name of "Boca de Cañada del Pinole."

GEO. FISHER, *Sec'y.*

Endorsed: Filed December 4th, 1854.

JOHN A. MONROE, *Clerk.*

Petition, &c.

In the District Court of the United States for the northern district
of California.

MARIA MANUELA VALENCIA, Claimant,
vs.
THE UNITED STATES, Defendant.

For the place named "Boca de Cañada del Pinole."

To the Clerk of said court:

Please take notice that we have been retained by the plaintiff in the above entitled cause, to prosecute this suit.

You will further take notice that it is the intention of the plaintiff to prosecute the appeal of said cause from the decision of the board of land commissioners to settle private land claims in Cali

fornia, rejecting said claim, being case No. 490 before said commission.

Yours, &c.,

BATES, LAWRENCE & HASTINGS,

Att'ys for Claimant.

In the District Court of the United States for the northern district of California.

MARIA MANUELA VALENCIA, Claimant, }

vs. }

THE UNITED STATES.

No. 490 of Transcripts.

For the the place named "Boca del Cañada del Pinole."

To the District Court of the United States for the northern district of California.

The petition of Doña Maria Manuela Valencia respectfully represents, that she is a citizen of California; that the premises hereinafter mentioned are within the jurisdiction of this court; that she presented her petition to the board of land commissioners to ascertain and settle private land claims in the State of California, on the 13th day of December, A. D. 1852, for a confirmation to herself of the place named "Boca de Cañada del Pinole," adjoining and contiguous with the rancho of Don Ignacio Martinez, with that of Julian Will, with that of Don Candelario Valencia, said tract containing three square leagues, more or less, situate in the county of Contra Costa. This petitioner further says, that she accompanied her said petition with the original grant of said land by Juan B. Alvarado, governor of California, dated the 21st day of June, A. D. 1842, to your petitioner. And your petitioner further says, that she supported her said claim before the said commission by the testimony of witnesses, a transcript whereof is on file in this cause. And your petitioner further says, that she was in possession of said premises prior to the date of said grant; that she lived upon and cultivated a considerable portion of said premises; which said occupation and cultivation she has continued until the present time; that she knows of no conflicting claim thereto.

And your petitioner further represents, that her said claim was rejected by the board of land commissioners on the 7th day of June, A. D. 1854, and a decree was entered accordingly.

That the only ground upon which said opinion and decree was founded, was for uncertainty and indefinitiveness of boundaries.

Your petitioner further says, that said ranch is bounded as follows: on the north by the rancho of Don Ignacio Martinez; on the east by the rancho of Don Julian Will; on the south by the rancho of Candelario Valencia, and on the west by the rancho last mentioned and the Sierra de Labor; that said boundaries contain three square leagues of land, and were the boundaries of the place

known as "Boca de Cañada del Pinole," long prior to the date of the grant therefor.

Your petitioner further represents, that the transcript in said cause containing the proceeding and decision, and the papers and evidence on which the same was founded, properly certified by George Fisher, secretary of the said board, has been sent up by said board of land commissioners to, and filed in this court, in accordance with the law in such cases made and provided, on the 4th day of December, A. D. 1854, to all of which papers reference is herein had, and made a part of and incorporated into this petition.

Your petitioner further says, that she begs leave to introduce further testimony in support of her said claim, under the rules and order of this court, and therefore prays that this honorable court will review the decision of said board of commissioners, and decide upon the validity of her said claim; and your petitioner shall ever pray, &c.

By BATES, LAWRENCE & HASTINGS,
Her Attorneys.

Due service of a copy, of which the within is the original, is hereby admitted.

Dated San Francisco, December 7th, A. D. 1854.

S. W. INGE,
U. S. Att'y.

Pr. A. GLASSELL.

Endorsed: Filed December 8th, 1854.

JOHN A. MONROE, *Clerk.*

Deposition of Jose de Jesus Martinez.

United States District Court, northern district of California.

SAN FRANCISCO, *May 30th*, 1855.

On this day, before W. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José de Jesus Martinez, a witness produced on behalf of the claimant in case No. 138, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 490 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, Edwin A. Lawrence, counsel for claimant, and A. Glassell, for the U. S. district attorney.

Question 1st by claimant. What is your name, age, and place of residence?

Answer. My name is José de Jesus Martinez; am 40 years of age; and my place of residence is Contra Costa county, California.

Question 2d. Are you acquainted with the rancho above mentioned; if yea, how long have you known it?

Answer. I do know said rancho; I have known said rancho since the month of April, A. D. 1829.

Question 3d. State what you know in regard to the occupation and cultivation of said rancho by said claimant, and state whether said claimant is a widow or married woman.

Answer. I know that in the said year 1829 the husband of said claimant cultivated said rancho, and did so every year up to the time of his death, which took place on the 6th day of January, 1840, and since then the place has been and is now occupied and cultivated by his widow. She is still a widow and has remained a widow ever since the death of her husband, Felipe Briones, who built in his lifetime an adobe house for a dwelling-house, and one for a kitchen or cook-house; also there was a garden.

Question 4th. State what you know in regard to the boundaries of said rancho, what are its contents, and what you know in regard to any survey of the same.

Answer. The boundaries of said rancho are as follows, viz: On the north it is bounded by the rancho of Ignacio Martinez, my father, called "Pinole;" on the east by the ridge of the lagoons, which ridge separates it from the rancho of William Welsh; on the south by the rancho of Mr. Brown, which he bought of Candelario Valencia; the dividing ridge between the two ranchos is called "Cuchilla del Keliz;" and on the west by the ridge called "La Cuchilla del Corral de Galindo," which ridge divides it from the San Pablo, or sobrante rancho, and also on the west and north-west by "La Joya," which touches both the San Pablo or sobrante rancho, and that of Ignacio Martinez. The rancho claimed in this case is entirely and completely surrounded and bounded by the ranchos which I have mentioned. The contents of the rancho claimed in this case are about three leagues. The original map, a copy of which is attached to the transcript in this case, was made by me in 1841, and is correct. It was the original map presented by Doña M. M. Valencia to the governor when she petitioned for the land, and I made it for that purpose. When I made it the houses, corral and garden were on the rancho as represented on the map.

Cross-examined by U. S. Attorney.

Question 1st. By what means did you obtain any knowledge of the boundaries of the said rancho and the contents of the same? State all the means of knowledge you have in the matter.

Answer. I became acquainted with the boundaries of said rancho by going over the land with Ramon Briones, one of the sons of the widow, the claimant, for the purpose of making the map I have alluded to; by comparison with the "Pinole" ranch, which contains four leagues of land. I know the one in question does not contain more than three. I have lived on said rancho of my said father since April, 1830, and have ridden over the ran-

cho in question thousands of times, and am well acquainted with everything connected with it.

Question 2d. Have you any interest in the event of this cause?

Answer. None whatever.

JOSÉ DE JESUS MARTINEZ.

Sworn to and subscribed before me, this 30th of May, 1855.

W. H. CHEVERS,
U. S. Commissioner.

Endorsed: Filed May 30th, 1855.

JOHN A. MONROE, *Clerk.*

By W. H. CHEVERS, *Deputy Clerk.*

Opinion by his Honor Judge M. H. McAllister.

MARIA M. VALENCIA, Appellant, }

vs.

THE UNITED STATES, Appellees. }

The claim in this case is predicated upon a grant made by Governor Alvarado on 21st day of June, 1842. The genuineness of this document is established, and the testimony in the cause proves a long residence on the land, and a substantial compliance with the conditions of the grant. No approval of the departmental assembly was obtained, nor was judicial possession of the premises given. The claim was rejected by the commissioners for the reason that, there being no segregation of the lands, the description of the premises in the grant and map referred to was too indefinite, and that the specific quantity intended to be granted could not be identified. On this point they say, "The map has no scale of distances laid down, and consequently we have no means of knowing the extent of country intended to be embraced within the delineations of boundary as there made."

This objection cannot avail to defeat this claim under the authority of the case of Fremont vs. The United States. The land granted is described by the name of "La Boca de Cañada de Pinole," being bounded by the rancho of Ignacio Martinez, by that of Julian Wil and that of Candelario Valencia. These boundaries are given in the map, together with the points of the compass.

The testimony of Jesus Martinez has been taken in this court, which gives the boundaries of the land. This witness deposes that the land is completely surrounded by the ranches named, and contains about three leagues.

The third condition of the grant describes the granted land as being three square leagues in extent, as shown by the map, and reserves the sobrante.

The court therefore considers that the claim to the extent of three square leagues, called for in the grant, should be confirmed.

Decree.

In the District Court of the United States for the northern district of California.

THE UNITED STATES	}	Decree No. 138.
ads.		
MARIA MANUEL VALENCIA.		

Stated Term—November 26th, 1855.

This cause came on to be heard at a stated term of said court on appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved March 3d. 1851, upon a transcript of the proceedings, papers and evidence on which such decision was founded, and on additional testimony taken in this court, and it appearing that said transcript has been filed according to law, and counsel for the respective parties having been heard, it is hereby ordered, adjudged and decreed that the said decision be in all things reversed; and it is further ordered, adjudged and decreed that the claim of the appellee to said Maria Manuel Valencia is a good and valid claim to the land known by the name of "La Bocha del Cañada de Pinole" to the extent of three square leagues within the boundaries as described in the grant and map on file in the record: Provided, said quantity of three leagues be contained within said boundaries; and if there be less than said quantity of three square leagues, then such less quantity is hereby confirmed to the said appellee.

M. HALL McALLISTER,

Judge Circuit Court U. S., Dists. Cal'a.

Endorsed: Filed November 26th, 1855.

JOHN A. MONROE, *Clerk.*

By W. H. CHEVERS, *Deputy Clerk.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the courtroom in the city of San Francisco, on Friday, the 6th day of August, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES	}	D. C. 138.—L. C. 490.
vs.		
MARIA MANUELA VALENCIA.		

In this case, on application of P. Della Torre, esq., U. S. attorney, it is ordered that an appeal in behalf of the United States from the final decision of the court rendered in said court at the June, 1855, term, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States

without delay, and the appellants are ordered to serve the usual citation according to law.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed August 6th, 1858.

W. H. CHEVERS, *Clerk.*

Citation.

United States of America to Maria Manuela Valencia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington on the first Monday in December next, pursuant to an order of appeal granted on the sixth day of August, A. D. 1858, by the district judge of the district court of the United States for the northern district of California, in a certain suit, wherein the United States are plaintiffs and you are defendants, on appeal, to show cause, if any there be, why the decision in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal at San Francisco, this sixth day of August, in the year of our Lord one thousand eight hundred and fifty-eight.

OGDEN HOFFMAN, [SEAL.]

District Judge.

Due service of within citation by U. S. marshal admitted this sixth day of August, 1858.

E. A. LAWRENCE, *Att'y for Claimants.*

Endorsed: Filed August 7th, 1858.

W. H. CHEVERS, *Clerk.*

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed and foregoing pages, numbered from one to thirty-one, both inclusive, contain a full, true, and correct transcript of the record from the board of U. S. land commissioners, and of the pleadings, deposition, opinion, decree, order, and citation, in said court, filed in this office in the case of The United States, appellants, vs. Maria M^a. Valencia, appellee.

In testimony whereof I have hereunto set my hand, and affixed [SEAL.] the seal of said court, at San Francisco, this nineteenth day of August, A. D. 1858, and of our independence the 83d.

W. H. CHEVERS, *Clerk.*

Filed 21st September, 1858.

ROMERO RANCH.

E. A. LAWRENCE'S

REPLY

TO

EDMUND RANDOLPH'S

OPINION.

TO THE PUBLIC.

The "Contra Costa Gazette," of May 5th, 1860, contained a grossly libellous attack upon me, on account of an ejectment suit commenced by me against the "Settlers" on the "Romero Ranch," in that county. The article alluded to, contained a letter from one Edmund Randolph, to which I wrote a reply and requested its publication in the same paper. They refused to publish it unless for a *consideration*, which I declined to give. And as those columns which contained this remarkable attack are hermetically sealed to me, in order to *prevent a reply*, I here state that in due time I shall hold the publishers responsible for the libel, and offer this as my only apology for appearing before the public with a pamphlet.

As there are more than forty thriving farmers in San Ramon Valley and vicinity, whose only tenure of title is the Romero Grant, they now *occupying two-thirds* of that claim, I deem it but an act of justice to them, as well as to all parties interested, to make the following impartial statement of the case, in order that they may judge for themselves whether the opinion of this would be censor of my actions, is the calm and matured opinion of a high minded lawyer, or the unprofessional personal attack of a repudiated politician, thrown out as *a bid for Settler votes, and a fat retainer*.

Although I am strongly tempted to hurl back the libellous billingsgate of this ex-candidate for Attorney General, yet I have too much regard for my own standing as a gentleman, too exalted an opinion of the profession of which I am but an humble member, to notice the unprofessional, uncalled for personal attacks of any one who will travel outside of the record, and thus degrade the lawyer to the level of the pettifogger.

But for fear that my object in writing this may be misunder-

stood by Mr. Randolph's clients, I will here premise, *that I have not offered, neither do I offer for sale, one foot of land to any settler whom I have sued.* If the land is mine, I will have it. If not, then they are welcome to it. Mr. Hall, mentioned by Mr. Randolph, is the only person to whom I have sold. He was not a client of Mr. Randolph's, but of Judge Pratt, of this city. If he is dissatisfied, or thinks he has "thrown his money away," he can have it back again upon restoring the cause to the Calendar.

The petition to the Land Commission, dated February 28, 1853, for a confirmation of the Romero claim, sets forth "a Grant in full property," to three brothers Romero, of the Sobrante of the Ranches of Moraga, Pacheco and Welch—"copies of some of said papers being herewith filed."

The genuineness of all the papers on file were fully proved by witnesses, and *conceded by the District Attorney on the argument of the case*; the only objection taken by him to the claim, was:

1st. That the papers on file did not of themselves constitute a title; and

2d. That no grant was ever in fact issued to the Romeros, and therefore they were not entitled to a confirmation.

The documentary evidence is as follows:

[Stamped Paper.]

"*The citizens* Inocencio. Jose and Mariano Romero, *natives of this Department*, before the righteous equity of Yr. Ex., with and according to law, state: That last year we forwarded to Yr. Ex. a petition soliciting a tract, which is unoccupied in the neighborhood of the Ranches of Don J. Moraga, Lorenzo Pacheco and Wm. Welch, and as said petition has been mislaid, we present ourselves anew, &c. * * *"

[Dated] January 18, 1844.

Marginal Decree.

"January 18, 1844. Let the Hon. Secretary of State report, having first taken such steps as he may deem necessary.

MICHELTORENA."

Jimeno's Order.

"His Ex. the Governor decrees. that the first Alcalde of the town of San Jose report upon the contents of the foregoing petition, summoning the Senors Moraga, Pacheco and Welch, so

that he may allege whatever cause they may deem proper, and all being concluded, let the papers be returned to this office.

Monterey, January; 1844.

MANUEL JIMENO."

The Alcalde's Report.

[Stamp.]

"The petitioners in this case and the owners of the lands bounded by the tract which is claimed, having been confronted, the latter said that the Senors Romero's did not prejudice them in any way; but on the contrary, that they desired them to be their neighbors, both for company and for the additional security of their families in that region. It has also come to the knowledge of this tribunal, that one Francisco Soto claimed the tract in question, some six or seven years ago; but in this time he has neither used nor cultivated it in any way to gain any rights thereto. Wherefore, the petitioners appear to me to be entitled to the favor they ask.

San Jose, February 1, 1844.

A. M. PICO."

Jimeno's Report to the Governor.

"Yr. Ex.: According to the Report of the Alcalde of San Jose, after summons to the owners of the ranchoes that bound the tract in question, and as to the good character of the claiming parties, it would seem there is no obstacle to making the grant they claim, if Yr. Ex. approve of it.

Monterey, February 4, 1844.

MANUEL JIMENO."

Order of the Governor.

"Let the Judge of the proper District take measurement of the unoccupied land that is claimed, in presence of the neighbors, and certify the result, so that it may be granted to the petitioners.

MICHELTORENA."

Subsequent to this, March 21st, 1844, they present another petition to the Governor, stating that they had appeared before the Judge of the proper district, to obtain a survey of the land; that he was unable to execute it because the owners of the adjoining ranches were absent; and, in as much as it might be some time before they would meet, they petition that he will grant them the land either provisionally or in such manner as he may see fit, "so that while it is yet time they may commence their planting and other works."

Jimeno's Report on this.

[Stamp.]

"Yr. Ex.:—I think that Yr. Ex.'s order should be carried into effect, in regard to the measuring of the land that is claimed, and as soon as this is accomplished, with the least practicable delay, Senor Romero can present himself, joined with Senor Soto, who says that he has a right to the same tract.

Yr. Ex.'s superior discernment will determine what is best.

M. JIMENO.

Monterey, March 23, 1844."

"Let everything be done agreeably to the foregoing report.

MICHELTORENA."

Francisco Arce, head clerk in the Secretary of State's office, testifies that after this last order of the Governor, in May or June, 1844, Soto and Romero went before the Governor. Soto obtained the "Soto Grant," near San Leandro, and relinquished his claim to the land of the Romeros, whereupon the Governor issued a title in due form, stating it, for the Sobraute to the Romeros, which when drawn up he, Arce, handed to Romero himself.

Jose A. Chavis testifies that at that time he was Secretary of the Ayuntamiento of Monterey, the capital of California; that he was acquainted with Romero who wished him, as a man of influence, to intercede with the Governor in his behalf in obtaining his grant; that he did so, and the Governor issued the grant; that Romero brought it to him to thank him for his assistance, when he took the grant and read it, finding it a grant in full property and in due form.

Innocencio Romero testifies that he obtained the grant after the interview between himself, Soto and the Governor, at the hands of Arce, which he retained until the trial of a law suit about the ranch in 1847 or 1848, before the Judge of First Instance, at San Jose, wherein Domingo Peralta was Plaintiff, and Innocencio Romero and Francisco Garcia were Defendants; that he was sick at the time and sent the grant to his lawyer, Judge Tingley, (now of this city,) to be used on the trial, and that he has never seen it since.

Jose Romero testifies that he sold out before the war, to Gar-

cia; that Innocencio, his brother, had charge of all the papers pertaining to the ranch; that "said ranch has been known as the 'Romero Ranch' since the same was petitioned for in 1843, and that their title to the same was never disputed except by squatters."

Afterwards this same witness was examined by the District Attorney for the government, when he attempted to prove that they never had anything but a *provisional grant*, but on cross-examination he reiterated his first deposition, and admitted he knew nothing about the matter, as his brother Innocencio had charge of the whole business pertaining to the Ranch.

Mariano Romero testifies that his brother Innocencio had charge of all the papers, and that he knew there was a grant, because Arce told him so in 1844.

Supreme Court of the State of California.

DOMINGO PERALTA,	}	Opinion of Judge Bennett.
vs.		
INNOCENCIO ROMERO and FRANCISCO GARCIA.		

"This action was brought to recover possession of a tract of land in the valley of San Jose. It was instituted in the Court of First Instance for the District of San Jose, previous to the adoption of the Common Law (1850). The proof shows that the Defendants had been in the *undisturbed* possession of the land in dispute for more than a year and a day previous to the institution of the suit, and the Spanish and Mexican authorities are explicit that a possessory action cannot be maintained in such a case."

* * * * *

A. M. Pico, then Alcalde at San Jose, testifies, that he had orders from Micheltorena, the Governor, to survey Pacheco's and Moraga's Ranchos, so as to separate their lands from that of the

Romeros ; the same order requiring him to put them (the Romeros) in possession ; that he summoned the neighbors twice ; they did not appear ; Romero was dissatisfied and complained to the Governor, whereupon the Governor ordered him to carry out the former order, by putting the Romero's in possession of the land, which he did.

That they cultivated the land extensively.

Elam Brown testifies, that he knew the Romero Ranch in 1847 ; that the house and corral were two or three years old then, that it was partly cultivated, and the Romeros were *making sales of the land*—(the highest evidence of ownership.)

Jose J. P. Mesa knew it 1845. The improvements had been made some time previous. Romero had three hundred head of cattle, horses, &c., on the ranch, at that time.

Jose Maria Amador knew the ranch in 1844, and says, "*they obtained a concession, subject to the establishing of the boundaries of the adjoining ranches,*" naming them. They built a house on the ranch, and he put on one hundred head of cattle for them and fifteen or twenty horses in 1844.

Ysidro Sibrian testifies, that he knew of Romero being in possession from 1842 or 1843. Innocencio Romero told me that he had the title papers to his ranch. This was in 1844, while he was sick at San Jose, on his way from Monterey, where he had been four or five times to get his grant. "He then told me, I have my title papers in my pocket, all right." I have lived near the Romero Ranch since 1838. Am one of the heirs of the Sibrian ranch, adjoining this. Romero lived upon the ranch until he sold out. I always supposed him to have title ; it was known by everybody as, and called the "Romero Ranch," which name it bears to the present moment.

Ramon Briones, one of the heirs to the Moraga ranch, testifies : "I have lived in the neighborhood of the Romero Ranch since the year 1838. I know he had a title from Governor Micheltoarena, because I saw it in 1845. All the neighbors understood, and conceded, that the Romeros had a title for the ranch." After mentioning the names of a dozen of the colindantes, he says : "It was always understood among these parties, that the Sobrante of

the two leagues belonging to Castro and Pacheco, was conceded to the Romeros ; that the title was in them."

Charles Brown, of this city, a brother-in-law to Innocencio Romero, also testifies to the same facts.

George B. Tingley, a practicing lawyer of this city, formerly a candidate for Congress from this State, a high-minded, honorable gentleman, was Attorney for Romero and Garcia in the suit by Domingo Peralta, above mentioned. He testifies, that on that trial he had the Romero Grant which was conceded in Court to be as good a title as Peralta's, but not as old in date. After the case was submitted to the jury, he never knew what became of the papers. He also examined the title papers when investigating the title for Mr. Attoyo, who bought an interest in said ranch on his advice. He recites the contents of the grant, the same as all the other witnesses.

Judge Hoffman rejected the case, on the ground, that Mr. Tingley must be *mistaken* in regard to seeing the grant—admitting that if his testimony were true, the claim must be confirmed ; (his being the only testimony we had taken in regard to the existence of the grant, on the first trial.) But on the second examination, after Judge Hoffman's opinion, Mr. Tingley says *that he was not and could not be mistaken ; that the examination of Mexican titles was his principal business at that time, and that he was perfectly conversant with them*, and recollected perfectly the contents of the grant. On cross examination, he says, the grant was in substance, as follows : "That inasmuch as the petitioners have prayed for a grant of land, as described in their petition, I have thought proper to concede the same to them, for the benefit of themselves and their families."

"In addition to this, there was a restriction that the grant should not infringe on the property of the adjoining owners, likewise that they should perform certain regulations required of them in regard to improving and occupying the land."

Judge Redmond, for many years County Judge at San Jose, now deceased, testifies, that he was an Associate of Judge Tingley in the trial of said law suit, and also upon the examination of the title for Attoyo ; that there was a full and absolute title in the Romeros—corroborating Mr. Tingley in every particular.

Mr. Kottinger testifies, that he was clerk for Mr. Sanford, Peralta's lawyer, upon said trial; that it was conceded on the trial that the title of Romero's was as good as Peralta's, but of a later date. He was interpreter on the trial.

Attoyo—testifies to the same state of facts.

Charles B. Strode, now deceased, (of the firm of Jones, Thompson & Strode, who were Attorneys in three-fourths of the claims presented to the Land Commission,) says that Sanford, the Attorney for Domingo Peralta on that trial, was a friend of his; that he went home to Georgia in 1852 or 1853, and died. That he told witness that he had taken the Romero Grant, after the trial was through at San Jose, because Romero owed him \$800 for fees, previously incurred. That the claimants did not know where it was; that as he (Strode) was practicing before the Land Commission, he might get a fee of \$4,000 out of the claimants for procuring the title papers for them, and wished him to undertake it and divide the fee. Strode examined the papers carefully, found a complete title to the Romero Ranch, but declined the offer, as he considered it dishonorable to obtain a fee under such circumstances. All these witnesses recite fully the contents of the grant.

Judge Swan, of Benicia, "was present in Sanford's office, and heard a conversation between Strode and Sanford, in regard to the title papers of some ranch in Contra Costa county, the particular purport of which deponent cannot recollect."

Three or four witnesses were examined by the Government, to prove that Romero had only a *Provisional Grant*, and not a perfect title.

The above is a brief epitome of the important testimony in the case, which is very voluminous, excepting that in reference to the unsuccessful search for the lost grant, which was left by Sanford among his papers at Benicia, when he returned to Georgia.

It is true, Judge Hoffman *once* rejected the claim, but upon what ground? *Solely* upon the ground that Mr. Tingley, (who was the only witness we had examined at that time, in regard to the existence of the grant,) *was mistaken*. We made a motion for re-hearing, founded on the affidavits of Judge Redmond, C. B. Strode and others, whereupon Judge Hoffman *granted the*

motion ; alledging that he thought *Mr. Tingley might* be mistaken, but that *all of the witnesses* being men of high character and lawyers, and understanding the nature of Spanish grants, *could not be mistaken*.

The case was subsequently rejected by his Honor, Judge McAllister, *not upon the merits*, but upon what I am free to confess I consider the only weak point in the case, the ground that we had not laid sufficient foundation for the introduction of *secondary evidence*. His Honor decided, that in addition to the testimony we had already taken, to prove the loss of the grant in the hands of Sanford, we should have taken the testimony of his Executor or Administrator in Georgia, for possibly he might have the Grant, among Sanford's papers there. The Attorneys for claimants thought it not necessary to go beyond the reach of the process of the Court to find them, and hence the appeal.

The law of this case is not difficult, viewed in the light of the recent decisions of the Supreme Court of the United States. Even *laying aside the whole testimony in regard to the existence of the grant*, does not the following language of the Supreme Court in a recent case, sound prophetic of its decision in the Romero case :

"The testimony consists of a petition to the Governor, in 1838, for a grant of the land, and permission to occupy it while the proceedings for the perfection of his title were pending. This petition was granted, and the Administrator of the Ex-Mission was directed to make a report upon the subject.

"In 1840, the Administrator reported that the land was unoccupied, and was not recognized as the property of the Mission or of any particular person.

"The testimony shows that his occupation commenced in 1840, and has continued fourteen years ; that he has improved and cultivated the land, and that his family have resided on it.

"The claimant appears to have been a citizen of the Department, and no objection was made or is suggested, why he should not have been a colonist of that portion of the public domain he has solicited. No imputation has been made against the integrity of his documentary evidence, and no suspicion exists unfav-

orable to the *bona fides* of his petition, or the continuity of his possession and claim. He has been recognized as the proprietor of this land since 1840."—*U. S. vs. Alviso*.

There was no grant in this case, and yet it was confirmed by the Supreme Court this winter.

But the testimony to prove the existence of the grant and its contents, is perfectly overwhelming. Although the government, in its opposition to the Romero claim, was assisted both by the "settlers" and the adjoining ranch owners, who appeared in the case by counsel, yet they have not produced one syllable of testimony to impeach, contradict, or in any manner impair the testimony of claimants on this point. Why this ominous silence? If this testimony is not true, how easy to prove it false.

This, it is true, is *secondary evidence*. The Supreme Court has repeatedly recognized that they will receive evidence outside of the archives, and in one case recently decided (*United States, vs. Ellen E. White, Administratrix*.) *in opposition to the archives*, to show the existence of the grant. In secondary evidence, there are no degrees, and often "trifles light as air," blending in, corroborating and harmonizing with the main testimony, carry a conviction of truth to the mind which makes them "*strong as proofs from Holy writ*."

Thus upon either horn of the dilemma, whether there was an absolute grant, as we contend, or only a provisional grant, as the government contends, in either case we are entitled to a confirmation.

But Mr. Randolph tells us, "Judge Hoffman's opinion cannot be shaken, and I can imagine no reason why the claim is still pressed, unless it be to extort money from timid persons."

Judge Hoffman announced from the bench, when he granted a rehearing of the case, not only that his opinion was shaken, but that it was *changed* in regard to the merits of the claim, and that upon the *equities alone*, he thought we were entitled to a confirmation.

"The claim is pressed," not for the purpose of extorting money, for no one has been asked for any money, but because the claimants are confident of a confirmation, and upon the advice of Messrs Crockett and Crittenden, their attorneys—attorneys who

have a large practice founded upon a reputation at the bar for learning, and gentlemen who will never condescend to write filibustering opinions for any set of men, for the purpose of securing a retainer. These gentlemen, too, have examined the claim *thoroughly*, and have no doubt of its final confirmation. And their opinion, compared with that of political lawyers, is regarded by the legal fraternity as "Hyperion to a Satyr."

Mr. Randolph, while indulging so freely in the epithets, "villain," "black mail" and "robber," with which his *legal* opinion is so wonderfully larded, should recollect that it is not yet beyond the memory of any of us, that parties *with whom he sympathized*, went among a peaceable and innocent people, in violation of the laws of his country, and wrested from the hands of our own citizens their shipping and transit franchises on the lakes of Nicaragua. If *he* offers himself as an umpire to pass upon my rights, or as a censor to sit in judgment upon my motives or actions, I would advise him to stick to his old Nicaraguan profession—one in which he has made a name in the world—one for which he is peculiarly fitted by nature and education—one where his delicate sense of justice and his tender "conscience" can have full scope to ventilate themselves. Not content with countenancing a raid against the innocent and simple minded Spaniards in Nicaragua, carrying consternation and bloodshed into their very homes, he now would advise "*settlers*" to entertain the same opinion of the rights of Spanish grant holders that he has always entertained of the rights of the Spaniards themselves. It comes with an ill grace from the mouth of such a one to accuse others of being "*robbers*," when they attempt to assert their just rights.

But, sir, I do not try my law suits in the newspapers, like some I could mention. A retainer is not such a *seldom* thing with me, as needs to be paraded before the public. The merits or demerits of *my* case, I shall leave to the decision of an unbiassed tribunal.

It is immaterial to me whether his clients follow his first *private* advice, or his *published* one; whether they wish to come in the first instance and *buy the land*, or "*to file an answer and compromise afterwards.*"

There is a tone about Mr. R.'s opinion which shows that it was written for publication, more for the purpose of intimidating *me*, than to reassure his clients, whom he admits had become not a little panic stricken. If this is his intention, this "*file-an-answer-first-and-compromise-after*" opinion, has wholly failed in its effect.

I would ask Mr. Randolph, if he does not consider the power *to libel a person wantonly*, and to rob him of his fair name among his fellows, for attempting to assert his just rights, quite as great an evil as any "that afflicts the State this day?"

But whatever may be Mr. Randolph's private or public opinion in regard to my being "an adventurer in the law," I can say, what every one cannot—that I have never used a discourteous expression towards a professional brother without provocation: I have never sunk the gentleman in the blackguard; I never yet have forgotten that the profession which I practice has been dignified by some of the noblest names in the annals of history, who considered that they were dishonoring themselves and their profession, by ever traveling out of the record to deal in Billingsgate against the opposing client, or his counsel.

With these lights before me, and with the foregoing meagre but impartial statement of the facts of the case, I submit this reply to the public, side by side with the statement of Mr. Randolph, and say to them, "judge ye between us"—which is the most "ridiculous"—the Romero claim, or the opinion of Mr. Randolph?

E. A. LAWRENCE.

SAN FRANCISCO, May 8, 1860.

NOTE.—In *U. S. vs. E. E. White administratrix*, claimants for the Ranch on which the town of Petaluma now stands. There is in proof a grant from Alvarado in 1840, and proof of possession under it, but no expediente and no record in the archives of any of the title papers. In 1844, Government proved in opposition to the claim that Miranda petitioned for the same land; the Alcalde reported that it was vacant and could be granted, and a grant was issued to him in due form, the expediente of all which proceedings is in the archives. Still the Supreme Court confirmed the Grant of 1844 and sent the claim back, in order that the rival claimants might litigate as to their respective rights to the Ranch.

Price,.....Fifty Cents.

LETTERS
OF
WILLIAM CAREY JONES,
IN REVIEW OF
Attorney General Black's Report
TO
THE PRESIDENT OF THE UNITED STATES,
ON THE SUBJECT OF
LAND TITLES IN CALIFORNIA.

SAN FRANCISCO:
COMMERCIAL STEAM BOOK AND JOB PRINTING ESTABLISHMENT.
.....
1860.

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1860.

ENTERED according to Act of Congress, in the year of our Lord eighteen hundred and sixty,
BY ALEX. P. GREENE,
In the Clerk's Office of the District Court of the Northern District of the State of California.

LETTERS.

NO. I.

SAN FRANCISCO, June 29, 1860.

The late letter of Mr. Attorney General Black to the President of the United States, on the subject of claims to lands in California, is pregnant with interest to all the people of this State. Of the points stated in it, I desire to call present attention to this paragraph:

“It must be distinctly understood that I impute no blame whatever to any of the law agents or other representatives of the United States Government in California for allowing so many of these false papers to pass unchallenged: much less can any charge on that account be laid at the door of the Judges. They had not the means of detection within their reach, and without the appropriations voted by Congress for that purpose, the frauds could never have been detected.”

What I wish to say in reference to this paragraph is, that if “no blame” is to be attached to the “law agents” or “other representatives” of the United States, in the matter of land claims in this State, and in allowing false papers to “pass unchallenged,” then *facts* have lost their significance. As to the first of the claims referred to in the Attorney General’s letter as fraudulent—namely, the “Limantour”—it is hardly possible that any person versed in the subject of land titles here could have at any moment considered it genuine. At all events, I pronounced it to be a fraud in the first day that I knew of its existence. That denunciation happened to be in the presence of one of the Commissioners and of the Law Agent of the United States, and a number of other persons, in the Commissioner’s office on California Street. At the time the subject arose, I was engaged in taking testimony in a case before Mr.

Commissioner Hiland Hall. On a subsequent occasion, when, after some years of expedient inactivity, the case of Limantour "came on, to be *heard*," as the legal phrase and understanding are, the Commission refused to *hear* anything, on account of a stipulation, and an unfortunately protracted absence of the law agent (Mr. McKune,)—a case, as it seemed to me, of what is called in Legislative dodging "pairing off." Two or three gentlemen of the bar, interested both for clients and for the welfare and honor of the city, desired to address the Board in opposition to the claim, and were refused a hearing. Among them was a gentleman, now absent, than whom no one is professionally or personally of higher standing in this community—Mr. Gregory Yale. I, also, was one of the number who wished to address the Board, and was refused.

I cite this case of "Limantour" only as an example. If the matter shall ever be strictly examined, it will be found that the various acts of Congress in relation to the claims to land in California, and the way that those acts have been administered, have had the effect, in a large degree, to substantiate what is false, and discredit what is true. Ten years ago, it would have been as feasible for a lawyer, who was instructed in the subject-matter, to detect a simulated grant here, as for a cashier of a bank to detect a false note, or a chemist a false coin; and this fact I have constantly stated, from 1849 upward, to the chief authorities concerned.

NO. II.

SAN FRANCISCO, August 30, 1860.

The sinister and ill-omened communication made under date of 22d May last by Mr. Attorney General Black to the President, on the subject of titles and claims to lands in this State, has not received the attention, either from the legal profession or the public, that, from the official position, and consequent potency for mischief, of the functionaries concerned, it calls for. On its first appearance, I remarked, through the columns of the *Alta*, on a few of its pretentious absurdities; and hoped that

some other person of sufficient acquaintance with the subject-matter, yet in whom its features might not have provoked so deep a disgust as they have in my mind, would have given to the public a complete exposition and castigation of the document. I have not had the satisfaction, however, to see any thing of the kind; and hence have determined that in a matter of so much public interest, and where I am so well acquainted with the facts, I am not at liberty to let truth and justice go entirely unvindicated, or to let official insolence and tergiversation, where circumstances so well enable me to administer punishment, go entirely unwhipt.

In this view, I intend to offer an exposition of at least some of the detestable points which Mr. Black's letter abounds in, and in which, he has tarnished the very name and style of his office, and committed himself and his Principal to a future at once indignant and contemptuous. This exposition will have its foundation in indisputable facts and proofs.

—

NO. III.

SAN FRANCISCO, September 6, 1860.

After the publication of the foregoing note, I met with a very forcible and pungent criticism of Mr. Attorney General Black's "exploits" in the matter of our land titles, contained in the *New York World* of July 21st, and signed "An Early Californian." The writer of the piece understands the subject that he treats of, and applies the lash vigorously, and with skill. On one of the points which he touches, I adopt the estimates thus furnished to my hand, and which, examination will show, come almost mathematically to the truth.

The writer addressing the Attorney General, says:

"Your remarkable letter shows that you have expended nearly the whole of the \$102,000 of appropriation given you for fighting fraudulent land claims. * * * *"

"In order to persuade the President and Congress that this fund has been well employed, your letter expatiates upon the enormous value of the lands claimed under fraudulent grants in California, which you state

to be *one hundred and fifty millions of dollars*. This slap-dash amount has been paraded with excellent effect through Eastern newspapers, and has, doubtless, been believed upon your testimony. The total claims—genuine, fraudulent, duplicates, and triplicates—presented in California, aggregated about twelve and a half millions of acres. Of these, one-third, as to area, were overlapping or duplicate claims, or claims of so vague a character as to have been either abandoned in, or hopelessly rejected by, the Land Commissioner's Court—leaving about eight and a half millions of acres as the quantity of land claimed in all California, under all sorts of grants, genuine or fraudulent, with which you could have anything to do. Of these from two-thirds to three-fourths were lands which were in the actual possession of the claimants, and had been before the conquest, which leaves about two and a half millions of acres as the quantity which could be claimed under fraudulent contested grants. The State of California contains 100,000,000 of acres; the one-fortieth of its area was, therefore fraudulently claimed. The total assessment roll of real and *personal* property in the State in 1859, was \$132,000,000. If the whole State is estimated at \$132,000,000 by persons employed for the purpose, on the spot, your estimate of \$150,000,000 for the one-fortieth part of it must be a slight mistake. As *you* estimate, the whole State must be worth \$6,000,000,000.

“In the same slap-dash manner, you state, after giving a long list of claims, ‘that the value of *any one* of the defeated claims exceeds the whole appropriation, and some among them exceed it *one hundred, or perhaps, one thousand fold*.’ The appropriation was upwards of \$100,000, consequently some of the claims defeated were worth, *say ten or one hundred millions of dollars each!!*”

The writer notes these items from the Attorney General's letter merely as “specimens” of its “reckless want of precision,” justly remarking that though this “dashing mode of writing may attract the eyes of news readers,” it damages the quality that, of all others, a state paper should possess—that of truth.

It falls to the duty of the present exposition to show that “reckless want of precision” and neglect and disregard of truth are the venial—nay, the innocent, parts of Mr. Attorney General's letter: absolute, reckless and malicious *mendacity* is its characteristic in its whole and in its details. It is alike false, vainglorious and malevolent in its intent, and in its pre-

tended statement of facts; and in respect of this latter is so in contempt of ascertained and ascertainable truth, that one cannot but hesitate whether the malice of the piece ought not to be spared in pity for the silly, stupid and fatuitous way in which it betrays itself.

After a sufficient amount of anticipatory self-gratulation and prefatory laudation of the labors of the persons whom he employed in the matter, the Attorney General proceeds to individualize "some of the cases recently [by means of his and their incomparable industry and unprecedented perspicacity,] recently disposed of in favor of the Government." First in his specifications, he regales us with the following on Limantour's claim :

"This was for the islands of Alcatraz, Farallones, Fort Point, Point Tiburon, and two square leagues of land covering the city of San Francisco. It was confirmed by the Board of Land Commissioners, and was pending in the District Court at the time when Mr. Stanton went to California. In connection with the District Attorney, he prepared the cause, and brought it to a hearing, and argued it. It resulted in an exposure of the frauds so overwhelming that no appeal has yet been asked for, nor is it probable that the claimant will ever dare to take one. I have already mentioned [and in the mentioning uttered a falsehood hereinafter exposed,] the enormous magnitude of this fraud, and the imposing array of testimony by which it was supported. The documents by which its falsehood was demonstrated are exhibited *in four large volumes of closely printed matter, besides the parol testimony*, which was also very voluminous, and the photographic exhibits, which fill a folio volume of 700 pages."

The fraudulent character of the Limantour papers I do not believe was ever doubted by any well informed lawyer, who had given attention to the subject of land titles in this State. Certainly, from the day of their presentation to the day of the recognition of the claim by the Land Commission, there was not a time that a Government Law Agent, of very ordinary capacity, acting in good faith, could not, in brief, and with little labor, have exposed the fraud. The Attorney General's boast, therefore, of the production of "four large volumes of closely printed matter," besides, "voluminous parol testimony" and

“seven hundred pages of photographic exhibits” to unmask the fraud, is the merest balderdash and gammon. The assayer of the Mint might as reasonably make an exultatory report that he had built a chemical laboratory at an expense of a hundred thousand dollars, and with the aid of a whole college of professors and manipulators accumulated an inexhaustible chemical magazine, for the purpose of testing a supposititious coin, when a groat’s worth of nitric acid would have better done the business. The fraud of Limantour was in point of fact demonstrated before Mr. Black or Mr. Stanton had anything to do with the case, as it might easily have been before it had run its ninety days, without grace, in the files of the Land Commission.*

But the establishment of *fraud in its origin* was not necessary to the defeat of the Limantour claim, had the efforts of the representatives of Government been in good faith to that end. The transfer of real property must be something beyond a *closet affair* in order to affect prejudicially the interests of third persons; and so, a paper title, whatever its grade, or original authenticity, is not allowed to supplant rights which shall have grown up whilst for a series of years its existence was hidden or suppressed. This proposition addresses itself to common

*The Attorney General claims as his own the merit (such as it may be) of having applied photography to the purposes of these cases; of having collected and collated the archives, and thus, through the instrumentality of Mr. Stanton, of having defeated the Limantour claim. It is a fact, that as early as about December 1st, 1857 long before the appropriation made by Congress for his use, the Attorney General had received from the District Attorney, Mr. P. Della Torre, a Report stating that the case had been virtually gained by the United States, that the seals were forged, inclosing photographic exhibits to demonstrate that fact, and stating the result of an examination of the archives. The Attorney General received this Report about the 1st December, 1857, and Mr. Stanton was not retained until the middle of February, 1858, more than two months after the receipt of such Report; and he arrived in San Francisco towards the end of March, 1858, that is, nearly five months after such Report had been made. Thus, the Attorney General became active in the matter, only after the case had been virtually gained without the slightest assistance on his part. As to collecting the archives, the bulk of those recently brought into use, have been in the custody of the Government since 1846; and they were collected and made available without any action whatever of the Attorney General or any department in Washington, for that purpose. A report from the same office gave the first information the Attorney General had upon that subject.

sense and to the commonest moral perception ; and it is upon reason and morality that laws—that is, all prescribed rules of conduct—are supposed to be based. Hence, if Limantour and his coadutors had even so covered up the fraud connected with the *manufacture* of their paper claim, that it could only be uncovered by the labors of a combined Argus, Briareus, Hercules and Daguerre, there was no occasion that the world should stand still till that miracle were produced in the shape of an Attorney General, JEREMIAH BLACK. Whether Limantour's papers were fraudulent or not, or could, or could not be so proved, his *claim*, and his conduct in connection with it, were indisputably so ; and, without reference to the original authenticity of his documents, his case, on its own showing, was void in law and equity. The principle here involved is one of the grounds on which the *Fuentes claim* was rejected in the U. S. District Court, and it is reënnounced in the late decision of the Supreme Court at Washington, in the same case (22 Howard's Sup. Court Reports, p. 460.) So obvious a proposition, however, was not suggested by the Law Agent before the Board of Commissioners, and the Board refused to hear volunteer counsel to that or any other point in opposition to the Limantour case. (The case of *Fuentes*, as presented by the Attorney General, will be noticed in contrast with the truth concerning it, when I shall reach the part of Mr. Black's letter.)

In his prefatory remarks, the Attorney General, after a general aspersion of the archives of Mexico, gives us, in addition to what is above cited, the following in regard to the Limantour claim :

“ Documents of title were produced from *the official depositories of the Supreme Government*, supporting a claim by a French adventurer,” etc.

I pass by the indecency of such an assertion as this, in a communication intended for publication, from a Cabinet Secretary to the Chief Executive, in reference to the official records of another Government. If the fact was as stated, the obviously decent mode of treating it was for our Government to make a representation and remonstrance to the Government of Mexico, that that Government might have an opportunity to

purge itself of the imputation, and punish the "officials" who had implicated it. That, or to make the matter a cause of direct and serious international quarrel, was the only way to treat a matter of such magnitude as the conversion of the public archives of a "supreme Government," into "*an instrument of sanctioning frauds*" *against another Government*.

If the aspersion were according to fact, it was a case either for apology and indemnification, or for summary retribution—in no possible circumstances for loose gossip and scandal, like the letter of the Attorney General to the President. But if the aspersion *were not according to the fact*—if it were knowingly and deliberately *contrary to the fact*—what then? That is precisely what it was—not the fact, but the reverse of the fact! There was not anything discovered in the archives of Mexico in support of the fraud of Limantour; but on the contrary, what evidences of the fraud were ascertained in that capital came through the ready and active coöperation of the officers of that Government with the agents of the United States! In what language shall we find words properly to characterize such indecency and mendacity in a communication from an Executive Counsellor to his Chief?

NO. IV.

SAN FRANCISCO, September 16, 1860.

The severity with which I have handled in previous strictures the manifesto of Attorney General Black to the President on the subject of land claims in this State, has been somewhat remarked upon. If I have been severe, and shall continue to be, in criticising that document and others of kindred character, it is not from a disposition on my part to be so, but from the necessities of the case—the impossibility of dealing with the subject otherwise. I do not criticise Mr. Black. I criticise the measures in which he has abused his high official station. I criticise them as an American citizen, and concerned as such in whatever relates to the honor and welfare of the country, necessarily involved in the acts of its high functionaries. I criticise them as a citizen of California, because they specially affect both its materials interests and its honorable repute.

In impeaching the purport of the Attorney General's statements concerning the Limantour fraud, I had occasion to refer to the case of *Fuentes*, decided at the last term of the Supreme Court at Washington. The Attorney General says of that case:

"THE FUENTES CLAIM.—The grant in this case bears the signature of Governor Micheltorena, but it is perfectly certain that it was fabricated at the City of Mexico about the year 1852. It is for eleven square leagues of land *on the Sacramento River*. The claimant was a nephew of Micheltorena, a mere lad, who came to California as a member of his uncle's family in 1843, and returned with him to Mexico when he was expelled from the Department. It is dated at Monterey, on the 23d of June, 1843, but the official correspondence of Micheltorena himself, when he came to be examined, showed that at that time he had never been in Monterey. This *conclusive fact was not known either to the Commissioners or to the District Court*, and the party was startled when he found himself required to explain it in the Supreme Court."

The first mistake of the Attorney General, here to be corrected is of the *locality* of the Fuentes claim. It was *not* "on the Sacramento River," nor near it. It was near the Mission of San José; between the Pueblo of that name and the Mission. I do not attribute this to an aforethought intent to misstate; for there does *not* appear any motive to it. But it is nevertheless worthy of serious reproof; for what confidence can be had in any statement of a paper of the character of this official communication, where there is such looseness of manner and indifference to fact? The letter of the Attorney General is in the nature of a *Criminal Information*. In its sweeping terms it casts a shade on the honesty of pretty much the whole community of California, and in its more particular accusations lays foundation for criminal prosecution enough to fill at least our State Prison with convicts. In a paper of this nature, going to the world with an official guarantee, any sort of carelessness or blundering shows a want of perception on the part of its author of the gravity and responsibility of his position and of the occasion; and must, independent of means to detect other and grosser errors, damage in every reflecting mind its title to credence in any particular. Moreover, the Fuentes case had just recently been argued by the Attorney General, and its

facts must have been fresh in his memory ; if a mind so habitually inattentive to truth, and careless whether statements correspond with fact, can be supposed to have the quality of memory, other than cloudy, confused and treacherous.

Secondly, the Attorney General assumes special merit to himself and his employés in the defeat of the Fuentes claim : having it to be understood that it was rejected in the Supreme Court on the ground of "*forgery*," proved in the discovery of a "conclusive fact," only there brought to light by his sagacity. The truth is, he had *nothing to do* with procuring the rejection of the case. No part of the money which his manifesto is intended to account for the expenditure of, went to *that* purpose. The claim had already been rejected by the District Court on sufficient grounds ; and these the Supreme Court affirmed, to the neglect and *direct ignoring* of his astounding "discovery." If the party claimant was "startled," as the Attorney General says, by the springing of a new "discovery" upon him at the last moment, in the final appellate tribunal, and at distance of half the circumference of the earth from the scene of the transaction, it is more than the Court was. The Court was not moved from its propriety by chicanery of that sort but *rebuked* it. The Court declares that there is "*nothing* in that record, whatever there may be in others," to impeach the characters of the witnesses, or "to justify such an attack" upon them ; and that the case must be decided "upon what its own record contains, and *upon nothing else*." These are the words of the Court, (22 Howard, 455) ; and they are a direct contradiction of the assertion in the prefatory and self-justificatory part of the Attorney General's letter, that "when the the historical facts ascertained from the archives, and the laws, customs and usages of the Mexican Government, of which a knowledge was derived from the same source, [i. e., Mr. Stanton's "photographic exhibits,"] came to be presented before the Supreme Court, *that tribunal concurred on every occasion with the views taken by this department*." The truth is, the Supreme Court did not concur, and has not concurred with "the views of the department" thus derived, or thus attempted to be exhibited, on any occasion whatsoever ; but has *rebuked* the

temerity of the Attorney General in offering for the guidance of its decisions matters of proof extraneous to the record. I happened to be present on one "occasion" when the venerable CHIEF JUSTICE, with the dignity and inflexible directness that belong to his character, returned to Mr. Attorney General, in open Court (handing them across the Bench), his "volumes of photographic exhibits," refusing to have any cognizance of their contents.*

The rejection of the claims of Fuentes were upon the just grounds that to prove genuineness of *signatures* is not necessarily to prove *due execution of a grant*; that secondary testimony is not competent, except a foundation be first laid by showing the impossibility of producing primary; consequently, that the genuineness of the title, in the absence of any official data or collateral evidence to aid it, was *not made out*; and finally, that "*supposing it to be genuine*," the circumstances in which the grantee undertook at that late day to "resume ownership" disconnected him and it from any equities or favorable consideration. If the Court had its suspicions of the original *bona fide* of the papers, they were not the grounds of its decisions, and they were not derived from Mr. Black's "exhibits."

I do not express any opinion touching the original authenticity, or date of paternity, of the Fuentes "grant," for I have no occasion to do so. I did, however, form and express an opinion concerning his "claim," in the year 1842, after about five minutes' examination of the document itself, and upon points in it patent to a person moderately intelligent in the subject matter, but which in a lapse of seven years, not all the intense acumen which the Federal Government has employed here has discovered, and even the lynx-eyes of the Attorney General and the reflective vision of Mr. Stanton's "photographic exhibits" have failed to detect.

In my next letter I purpose to review what Mr. Attorney General has to say of the "Sutter Claim," and "Nye's" and

*This reference to "photographic exhibits" and the treatment of them *by the Court*, applies to those which the Attorney General attempted to interpolate into Records already made up. There were others introduced and proved in the District Court which received the same consideration, of course, as other parts of the case submitted for decision.

"Bassett's." Meanwhile, I wish to draw attention to the following "startling" passages, given to us by the Attorney General in startlingly emphatic italics :

"The archives [Californian] thus collected furnished irresistible proof that there had been an organized system of fabricating land titles carried on for a long time in California, by Mexican officials ; that forgery and perjury had been reduced to a regular occupation ; that the making of false grants with the subornation of false witnesses to prove them, had become a trade and a business."

"There was also compiled from the records here a faithful chart of all the professional witnesses or persons supposed to have hired themselves out to do the business of swearing the false claims through. Tolerably full BIOGRAPHIES of nearly all the men who have been engaged in these schemes of imposture and fraud, from the Governors down to the lowest of the suborned witnesses, can now be furnished whenever necessary."

Now, with the "conspiracy" thus irresistably proved, and the "conspirators" thus not only detected but "biographied," where is the vengeful majesty of the law? Where slumbers the might of that "penal statute" which the Attorney General informs us in another place he procured the enactment of? With the hundred eyes of the Argus part of our illustrious Government Solicitor, so alert to detect "conspiracies," has not his Briareus part a single arm to reach and chastise the "conspirators?"—nothing but his Virago part to rail at them from a distance? Many of the persons whom he is supposed to allude to in the above wholesale denunciation, and some whom he mentions by name in other kindred writings, are daily seen in our streets. Where are our Acting Attorney Wise, and our Actual Attorney Benham! They cannot be ignorant of the men nor the facts. They surely know the merits of "the Lugo," "the Sherrebeck," and "La Isla," which Mr. Attorney General, in present and anticipated enjoyment, rolls as sweet morsels under his tongue. Then let them drag their "spotted" and "biographied" culprits forth, if they have them, and not leave whole communities and classes subject to a vague and general official denunciation, and the whole interests of the State suffering under an uneasy sense of insecurity and suspicion.

NO. V.

SAN FRANCISCO, September 21, 1860.

I proceed to consider the Attorney General's letter, in reference to his statement of the Sutter case. He says:

"Capt. Sutter asserted that he was the owner of thirty-three square leagues in the valley of the Sacramento, under two grants, one of which had been made by Alvarado, in the year 1841, to himself, for eleven leagues; the other twenty-two leagues was under a grant alleged to have been made by Micheltorena to Sutter and his son. The grant by Alvarado was genuine, but that bearing the name of Micheltorena for twenty-two leagues was, without doubt, a fabrication. * *

The Board of Land Commissioners and the District Court not having that archive evidence before them, and for that reason *misunderstanding the Mexican system of doing business, and the historical facts connected with the colonization of the country*, decided that Sutter and his grantee were entitled to the whole thirty-three leagues of land which they claimed. * * The fraudulent character of the second, or Sobrante grant, was so clearly established by the production of the official correspondence between Micheltorena and his subordinates, that the Supreme Court were bound to reverse the decree of the District Court and reject the claim."

The delicate intimation of want of intelligence and capacity on the part of such gentlemen as Messrs. Harry I. Thornton, Judge Augustus Thompson and Governor Felch, Commissioners, and of the two learned Justices who compose, for the purpose of land cases, our Federal Court for this District, I leave for general appreciation, without comment. The other part, namely, that it was from "not having the archive evidence before them," that those tribunals fell into erroneous decisions, which were corrected in the Court above with the aid of that "archive evidence," presents points that cannot be overlooked.

Was the "archive evidence" *manufactured*, that it only became "accessible" at the late date the Attorney General indicates?

Was it *suppressed* after its lucky "discovery," that it could not be in fact made "evidence" before those tribunals only in which testimony can be lawfully introduced?

Were all the law agents, district attorneys, and assistant counsel employed by the Federal Government here faithless or ignorant, that they did not inform themselves of those obvious sources of intelligence, and use them to their proper ends?

These questions necessarily arise out of the Attorney General's statement. Who will answer them? Some other points arise which do not need the interrogative form. I will state them in the positive.

Mr. Attorney General says, that the grant of Alvarado to Capt. Sutter, was "genuine." In that he certainly speaks the truth; but in it, convicts his own lips of official and professional falsity. In the argument of the case before the Supreme Court he denounces that claim in the same terms as he did others. This is shown in the opinion of the Court (21 Howard, 174) from which I quote:

"The first inquiry in cases like this is, has the authenticity of the grant been established? This was not questioned in the District Court, but in this Court the appellants have denounced with much force, the evidence as insufficient to support it."

Thus we have, by his own testimony, the highest law officer of the country in appeal to its highest judicial tribunal—its Areopagus—its very citadel of justice and impartiality—with attempted imposture in his mouth.

But this is not the worst feature in this part of the Attorney General's report. It is an absolutely false assertion that the claim of Captain Sutter, in either of its parts, was decided by the Supreme Court on the ground of "fraud" or "forgery," or on any fact brought to the knowledge of that Court that was not in the knowledge of the tribunals below. This, any one may satisfy himself of by looking at the decision of the case, as officially reported, in 21st Howard's Reports.

Again, it is untrue that any portion of the money to account for the expenditure of which the report is ostensibly made, went toward the defeat of that branch of the Sutter claim which was rejected; though, to excuse that money and procure more, was the ostensible object of the Attorney General's report.

NO. VI.

In beginning these strictures I had proposed to remark point by point on the flagitious character of the Attorney General's Report to the President, but I do not find that that labor will be necessary. The legal maxim "*falsus in uno falsus in omnibus*"—i. e., falsehood in one particular implies falsehood in all—comes to the rescue; spares the disagreeable task of following mendacity through all its phases. I condense therefore a few salient cases.

The report says of the "*Teschemacher Claim*":

"This [the statement of the claim] was believed by the Board of Land Commissioners, and the District Court, but the *subsequent investigation* so clearly proved the latter fact to be untrue that the claim was *ignominiously rejected by the Supreme Court*."

Now the Teschemacher claim was *not* rejected by the Supreme Court at all—"ignominiously" or otherwise, with or without "subsequent investigations." It was "remanded" to the District Court "for further evidence and examination." (22 Howard's Reports, 406.)

Again, says the Attorney General:

"*The Andres Pico Claim* was under a fraudulent grant, alleged to have been made by Governor Pio Pico to his brother Andres Pico. The Supreme Court, at the late term, reversed the decree of the District Court, confirming it."

In truth the Supreme Court reversed the decree of the District Court only to the end of *remanding* the case "for further evidence." (22 Howard, 416.) The case was examined by the writer of this, at the instance of the Attorney General, on the record at his office in Washington. The decision of the Supreme Court was precisely on the ground set forth in that brief, viz: insufficiency of evidence as the case was presented. The Court does not allege a "fraud." The Attorney General, however, does. Let me call his attention to the fact that the principal party to his alleged fraud and the proposed benefi-

ciary of it, has been for some years an office-holder under the Administration, and in direct connection with the land department. If, then, the allegation of the Attorney General be true, Justice cannot longer be represented as stone blind, but with an obliquity of vision that would defy the original operator for strabismus. I call the attention of the District Attorney of the Southern District to the case. Arraign the accused, Mr. Attorney, or, by your inaction charge on your chief a calumny. *Piat justitia*, Mr. Attorney, even if partisans fall.

I quote again :

“*Raphael Garcia's case* [says the report] was a bold fraud which *passed through the Board of Land Commissioners* and the District Court, but was exploded when it came to be examined in the Supreme Court.”

The Attorney General, in his argument before the Supreme Court, commences by asserting that the *Board of Land Commissioners rejected the claim unanimously* (22 Howard, 274); and the Court says so also. (Ib. 282.) The barefacedness of the falsehoods of the report must have been counted on for their passing with impunity. They are of the *defiant* sort; in the face of record evidence, and in the teeth of their utterer. Moreover, this claim was not lost by an “explosion,” or other buffoonery before the Supreme Court. It was rejected by that tribunal, in so many words, “*for the reasons set forth in the opinion of Judge Hoffman*, delivered in the District Court, and found in the record.” (22 Howard, 280.)

Of the “*Galbraith Claim*,” the Attorney General says :

“This was for the ‘Bolsa de Tomales,’ containing eleven square leagues. The original papers were alleged to have been made by Pio Pico to Juan Padilla. It is manifest from the papers themselves that Pio Pico had nothing whatever to do with the fabrication of this claim. They were not antedated, but simply forged. The oaths of professional witnesses were strong enough to carry it in the tribunals below. The Supreme Court reversed the decree and rejected the claim.”

I select this case from the multitude in further exemplification of what I am stating, for two reasons: first, for the sake of the absent and the dead; second, because, at the instance of

the Attorney General himself, I had occasion to become specially acquainted with it. The falsifications in which the Attorney General indulges concerning it are astounding for their effrontery :

1. The grant was for *five* square leagues only, not for "eleven."
2. The "papers" *were* made by Pio Pico to Juan Padilla, and no question was made of the authenticity of the original grant, or its *bona fides*, by either of the three tribunals that passed upon it.
3. The grant was neither "antedated" nor "forged." It is genuine; it was attended with the proper preliminary steps; it was signed by the Governor, and countersigned: it had the due "archived evidence;" it was indexed, and long ago authentically reported.
4. Pio Pico had something "to do" with the claim. He made, beyond all contradiction, the grant that it is founded on.
5. The oaths of "professional witnesses," if there be such, had nothing to do with "carrying the claim through the tribunals below." And finally :
6. The claim was *not rejected by the Supreme Court*. It was *remitted* to the District Court "for further examination and evidence." This order was not because the original good faith of the grant was doubted, or in its due execution: but for other and distinct reasons. The judgment of the Court, as shown in its opinion, corresponds exactly with the suggestions of the brief which I furnished to the Attorney General, in which there is no intimation of a forged grant. In fact, in the argument of the case before the Supreme Court, the Government counsel even do not make such an allegation.

In connection with the honorable name of ITURBIDE, the falsehoods of the Attorney General's report approach the sacrilegious. I shall expose them, and leave their exposition to characterise them with the epithets that will arise in every ingenuous mind.

Some persons have thought that in view of the brief career remaining to the Attorney General in that place, this exposition, although just and undeniably true, is more noticed than the individual or his doings merit. I do not concur in these ideas. Official tergiversation is so high a position and on

so grand and rank a scale was never before seen. It poisons public sentiment, and is calculated to poison the fountains of public justice. Is the iniquitous example to be given that such an iniquity may plead immunity because that the greatness of its perpetrator is but shortened? Incumbency of office in our country, except in its federal judiciary, is as a rule shortlived; and it is consequently the *delinquency* that we watch rather than the delinquent, that the example may not go into precedent. Mr. Black must have his chastisement that his successors may not also degrade the office that he has so abused.

Another motive is overpowering with me.

The conviction upon the public mind amounts nearly to a certainty, that the President contemplates the nomination of the Attorney General to fill the existing vacancy on the Supreme Bench. Who can be indifferent with such a calamity supposed to be impending.

NO. VII.

SAN FRANCISCO, September 25, 1860.

In reference to the Iturbide claim, I quote in full what the Attorney General's Report has to say :

"Iturbide, it will be remembered, was one of the most successful military leaders of the revolution which severed Mexico from Spain in 1822. Between fraud and violence he found means to make himself Emperor of Mexico, and sat upon the throne of that country for a short time. His power was overthrown, and he himself expelled from the country; but returning soon afterwards from his banishment he was shot. His legal representatives, assert the Mexican Congress—the same Congress by which he was deposed from the imperial throne as a usurper, and under whose orders he was put to death as a traitor—voted him the four hundred leagues of land claimed in California, 'for his patriotic services in consolidating the republic,' and that the grant was afterwards confirmed to his family by an act of Congress, which was lost during the occupation of the Capital by American troops. The District Court refused to believe this monstrous story, sustained though it was by the most plausible mode of telling it, and the Supreme Court affirms the decision."

The misstatements of this extract are so flagrant and so pro-

ruse—it is so redolent of the English monosyllable that signifies flat mendacity—so piled over and over with falsehood—Pelion of malice on Ossa of effrontery—that one is at a loss to know how to deal with it else than by disdainfully trampling it under foot. If it had happened to Mr. Black to have had entrance to respectable society in the metropolis of his native State, he could not but sometimes have met with the venerable widow of Iturbide and her sons and daughters, and that even he should not have had in her presence respect for the misfortunes of the name.

After the killing of her husband, and the culmination of the calamities of her family, Madame Iturbide took refuge in the United States, making her residence in Philadelphia. Her children were educated there, and she still resides there; and no family commands more universal respect and regard. In Mexico the name of Iturbide has an enthusiastic appreciation. The same Congress that caused his abdication and exile voted him an annual pension of twenty-five thousand dollars during his life, and eighteen thousand dollars in perpetuity to his family. The same Congress that, in anticipation of his return to his country, voted in a moment of panic his death, afterward, with all possible honors, followed his remains to the grave.

In 1822, a concession of twenty leagues square of land was voted to him, and an acknowledgment of indebtedness to him of a million of dollars, in consideration of his services and sacrifices. This act was reaffirmed and recognized in 1835, and in many subsequent acts, both legislative and administrative. In 1838, sixteen years after the sad tragedy of his death, new recognitions of his services were accorded, and new honors to his memory. I translate the Decree of the General Congress:

“1. The Government directs that the remains of the hero of Iguala, Don Agustin de Iturbide, shall be transferred to the capital of the Republic, on the 27th of September proximo, the anniversary of his entrance into it, and in which he gloriously consummated the independence of the country. 2. It likewise directs that proper measures be taken that said remains be deposited in the Cathedral of Mexico, the place destined for its heroes. (Arillago's Compilation of Laws for 1838, p. 292.)

Pursuant to this congressional decree the Executive Government took measures for a funeral pageant of the most imposing and demonstrative kind, military, civic and popular. (Ib. p. 395.)

It is proper further to say that the sons of Iturbide have been constantly preferred to high public trusts under the many phases of the government of their country.

These facts are all historical, as are also the particular data concerning the concession of land contained in the record of the case made in the Commission and the District Court.

But, says the Attorney General, "the District Court *refused to believe this monstrous story*" [of the concession of land], and "*the Supreme Court affirms the decision.*" I am led here to pause. These falsifications so in direct face of record evidence almost universally accessible, are hardly reconcilable with a sane or responsible state of mind on the part of the utterer. For this reason I will but cite the Supreme Court itself to speak to the facts. I quote from vol. 22 of Howard's Reports, p. 291.

"Mr. Justice McLean delivered the opinion of the Court.

"This is an appeal from the District Court of the United States, for the Northern District of California. A grant of twenty leagues square of land, equal to four hundred square leagues, was made by the supreme Government of Mexico to President Iturbide, to be located in Texas, on 25th February, 1822, 'in recompense for his high merit, in having achieved the independence of his country.'

"In 1835, the Congress of Mexico authorized his heirs to locate the land in New Mexico, or in Upper or Lower California. On the 20th of February, 1841, it was decreed by the President that the land should be located in Upper California; and on the 5th of June orders were given by the President to the Governor of California to assign the land selected by Salvador de Iturbide, one of the heirs, in fulfilment of the grant, and the order was duly received by Pio Pico; but when Salvador was near Mazatlan, en route for California, to locate and take possession of the land, he found that port in rebellion, and was obliged to return to Mexico.

"The claimants took no further proceedings till after the close of the war with the United States, and Congress had passed laws to carry into effect the treaty stipulations. They then proceeded to locate the claim on the track described on the map, and presented their petition to the

Board of Commissioners, asking for the confirmation of the grant. The Board rejected the claim, on the ground that it had been located prior to the change of government.

"An appeal was taken to the District Court, under the act of 1852; but the counsel of appellants being detained from home by sickness, did not file the notice, directed by the act to be given within six months."

The opinion then goes on to show that the District Court found the Statute of Congress obligatory, and that the appeal under it could not be entertained for want of due notice. The Supreme Court, after reviewing the Statute, also found it "mandatory," and not permitting "the exercise of any discretion."

The claim of Iturbide was, in my opinion, decided rightly by the Commissioners, and if it had gone on its merits to the Supreme Court, I do not doubt that the decision would have been the same. It is a claim upon the public domain of Mexico, and not upon that which had passed to the United States. But that was a question of public law, which eminent counsel considered debateable, and which the claimants had a perfect right to present and argue; and that was all they did. To villify them for it is only in itself villainous.

In speaking of the Attorney General's statement of the *Galbraith claim*, I omitted to quote the volume where it is reported. It is in 22 Howard, p. 89.

I have two words more to say touching that case. 1. New testimony is now taking in it, in pursuance of the mandate of the Supreme Court, notwithstanding the assertion of the Attorney General that it had been "rejected." 2. There is a paper in the case—not the grant—which the Attorney General both in argument and in his report delares to be "not antedated, but simply a *forgery*." Whether this allegation be true or not, it is certain that the *body of that paper* is in the handwriting of a person who was *one of the four Electors* to cast the vote of this State for the present incumbent of the Presidency. It would be interesting to know if he is one of the gentlemen whom the Attorney General has caused to be "*biographed*," and if that particular fact in his memoirs is counted a propitiatory

atonement under the Attorney General's "penal statute." I call the attention of the District Attorney of the Southern District to the pertinacity of the inquiry, and of all inquiring minds to its logic and philosophy.

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NO. VIII.

SAN FRANCISCO, Oct. 3, 1860.

The ostensible object of the Attorney General's Report is to account for the expenditure of a considerable sum of money which he had procured the allowance of from Congress, and to lay a foundation for further appropriations, subject to his disbursement. To these ends, he announces that there were "lands claimed under grants *ascertained* to be forged" to the amount of "not less than one hundred and fifty millions of dollars!" and that with the paltry sum of \$102,000, he had already encountered and routed, "exposed and defeated," "*more than two-thirds of them in value.*" He then goes into an exemplification of the work still "*to be done.*" But here, rapid as his arithmetic is, it does not keep peace with his zeal. Having vanquished "more than two-thirds" of this formidable host, a "half" remains; as witness this passage:

"About thirty claims under fraudulent grants are still pending, some of them in the District Court, and some in the Supreme Court on appeal. These claims involve property supposed to be worth *about half as much* as that which has already been wrested from the hands of the spoilers. Estimates have been made for the appropriations necessary to keep up the defense."

The cause of education is thus indebted to the enlightened Attorney General for two new rules in cyphering, namely: the bragging or boasting, and the *supplicatory* or begging. By the first, "about one-half" becomes "more than two-thirds;" by the second, less than one-third becomes "about one-half"—making a difference in the initiatory problem stated by our new professor of figures, of the snug sum of twenty-five to thirty millions. I think the country will agree with me, that the developer of this improvement in the science of numbers

ought rather to have his reward in the *fisc*, than where he would be confined to the exact lines of truth which belong to the morality of the law and the Bench. The exchequer—that is to say, that part of it available to the administrative department—could not fail to be made the most of under his direction. Already in his capacity of chief legal adviser, arithmetic has ceased to be one of the exact sciences.

But it is not with this looseness of statement—sufficient, though it be, in itself to impeach the whole document in respect of veracity and reliability, and disgraceful in a state paper dealing with matters of such magnitude, or, in fact, with any official paper—it is with a matter of more gravity that I have now to deal.

The Attorney General's report is, in consequence of a call from the House of Representatives, to know how certain moneys went; and it professes to give "a detailed statement of the amount expended," and "an explanation of the circumstances under which these appropriations were *asked for*, for the *purpose to which they have been devoted*, and the *results accomplished*."

To show the "results accomplished" by aid of that fund, he cites twenty cases "recently disposed of (as he says) in favor of the Government." Very few of these cases have really been "disposed of." I do not know exactly how many, for the last volume of the Supreme Court Reports is not received here; but am nearly certain not above one-half of them. The others are "remitted" for further testimony. What may be their ultimate fate is a question apart from this exposition. But whether of claims actually rejected, or only sent back for further elucidation, *not two in ten* had the benefit of one cent of the expenditure out of the fund that they are lugged in to bear the burden of. In one case, at least, and that the most important in point of value of all that, in this category, the Attorney General mentions, if the fund operated at all, its operation was in behalf of the claim. I allude to the case *Santillan*, concerning which Mr. Attorney General brings forward his achievements with this flourish of trumpets.

"THE SANTILLAN CLAIM—This was prosecuted in the name of James R. Bolton, but at the time of the final decision the title was held partly by Palmer, Cook & Co., and partly by an association of gentlemen in Philadelphia. It covered a large part of the city of San Francisco, including public and private property valued at many millions of dollars. The Board of Land Commissioners placed upon record a strong opinion in its favor, and the District Court, being without those tests which the archives have since furnished, affirmed the decree. This was early in 1857. An appeal was taken to the Supreme Court, and was argued at the last term. The tribunal of the last resort regarded the grant as being not only without legal validity, but totally destitute of the proof necessary to show its honesty. It purports to have been made by Pio Pico in February, 1846, to José Prudencia Santillan, who was at that time priest of the Mission at San Francisco Dolores. But he never claimed it for several years afterwards; on the contrary, he denied any ownership of it until the early part of 1850, when he transferred it to Bolton. The great crime of forging the grant and imposing it upon the courts as genuine, is not charged upon Santillan himself. He is believed to have been the tool of others."

Before going to the main point of this present letter I have some inquiries to make:

1. The Attorney General states that the District Court was "without those tests that the archives have *since* furnished." What new archives has this "SINCE" furnished that the Court could not be acquainted with nor the Government lawyers bring to its notice?

2. Santillan "transferred" the grant; but the "great crime of forging" it is "not charged on him." He is believed to have been the "tool of others." Who are those "others?" Who are or were the perpetrators of the "great crime?" How is it that its recipient and beneficiary is innocent and only a "tool?" Whose "tool" was he? Why does the "penal statute" sleep either for the "tool" or its supposititious handlers?

To pause before inquiries of this sort, Mr. Attorney General, and Messrs. District Attorneys, and "Assistant Counsel," is only to confess that the report is a general (and in that view unmitigably base) libel, or that there is not courage in the concern to meet the occasion. I say unmitigably base, because a general scandal is of a meaner sort than a personal libel—the

latter being actionable or resentable, and the other going free like an undefined taint in the atmosphere.

To return to Mr. Attorney General's money disbursements. By far the largest item of his "detailed statement"—indeed the gross of it—is of fees, emoluments and disbursements controlled by his former law associate and late photographer, Mr. Stanton. Now, Mr. Stanton was not counsel *against* that case at all. Before he came to California he was counsel for it, and he received that employment in consequence of suggestions of the Attorney General himself. He made a brief in favor of the claim. He reported it not only good, but "impregnable"—that is the word, *impregnable*—a sort of legal and equitable Gibraltar. He came to California, therefore, charged, I do not say with both sides of the case, but rather in a blended and mixed sort of way that made it all one-sided. He came with a stipulation concerning the case, on the part of the Attorney General, which stipulation the Attorney General did not stick up to; and that is the way our Hercules of an Attorney General got through his own straits. He backed out of them; went out with the tide. Moreover, if the eminent labors of Mr. Stanton here, offered any new facts tending to damage the claim, or to change his previous impressions of it, they obstinately remained in the back ground; even the concentrated rays of his photographic lens failed to bring out their colors; for he reported on his return to Philadelphia and Washington that the facts which he had gathered and collated here had confirmed his opinion of its soundness and impregnability."

These remarks are not to any question concerning the operations of Mr. Stanton other than as the facts falsify the representations of his principal. They are to the point that the Attorney General's report, in respect to his expenditures of public moneys, or of any agency that he has had in protecting public interests here, are not merely negatively but positively false. They are with a view to prevent wrong impressions, and unfounded hopes and unfounded fears from growing out of his malversations, to the detriment of the real interests of our suffering State. They are with a view, in behalf of our common country, that the man who has so sullied the office of first

Legal Adviser under the Constitution, shall not have his iniquitous reward by a place in its highest Judiciary.

NO. IX.

SAN FRANCISCO, October 8, 1860.

The Attorney General cites a number of cases as of "work done," which I had intended to notice his statements of; but the delay in the receipt of the volume of Supreme Court Reports, in which they are contained, prevents me. I am acquainted with the facts, but prefer to point to volume and page for their verification.

Therefore, I pass to a brief notice of the Attorney General's statements concerning his "examples of the work *which remains to be done*."

First, in that category, the Attorney General puts the case of the Cinnabar Mines of *New Almaden*. This case, and the proceeding in it, are at this moment attracting so much attention, and it is so immediately the subject of judicial investigation, that I refrain from remark on anything that relates to it.

The next case which the Attorney-General alludes to as "not yet disposed of," and as of the "work yet to be done," is reported to him as follows:

"*Peter Sherrebeck's Claim* is said to be under an Alcalde's grant. It is located in the heart of San Francisco, and is covered all over with the most expensive buildings in that city. It was determined in the District Court in favor of the claimant. An appeal has been taken, but the record has not been sent up. I do not, therefore, speak with certainty about it. The high character of Judge Hoffman, for ability as well as integrity, entitles every opinion of his to profound respect. But the law is not one of the exact sciences, and I have reason to believe that the title is a fraud. If it be so it should receive no quarter, for its confirmation would be a mere robbery of the men who have spent their labor and money in building up and otherwise improving the city."

At the time the Attorney General wrote, the case of Sherrebeck was *not* among the "undisposed of." It was disposed of

in favor of the claimant, and under circumstances that some passages from the opinion of the District Court will explain:

“No argument [says the Court] has been made or brief filed on the part of the United States.

“It is to be regretted that in a case of so great importance the Court is left to determine questions of law without argument from both sides, and to decide questions of fact which it would seem could be ascertained with entire certainty merely by a preponderance of testimony.

“The case was submitted to the Court on the 28th of August, 1857, on briefs filed.

“The claimants have frequently called the attention of the Court to the case, and they have a right to insist that a decision be rendered. I therefore proceed to decide it on the evidence before me.

“It does not appear from the transcript of the evidence before the Board, that any attempt to impeach their authenticity was made by the United States, nor is any doubt on the subject anywhere suggested.

“Obliged as I am to decide the case upon the evidence submitted, I have no alternative but to determine that the preponderance of testimony is on the side of the claimant. If the fact be otherwise than as testified to by them, it would *have been easy for the United States to have established it*.

“But, as before observed, no testimony whatever has been taken by the United States, since January, 1856, when the transcript was filed in this Court. No objection to the claim, for want of occupation and cultivation, is noticed in the opinion of the Board, nor is *any objection, whatsoever*, to its validity, taken by the United States in this Court.

“No objection on this point [a point of law] has been made by the United States.”

So it appears, that from January, 1856, to November, 1859—four years less one month—the Government did not offer to the Court a line of evidence to a point “easily to have been established,” nor a brief nor an argument to a point of law.*

Again, from August, 1857, when the case was submitted to the Court, to November, 1859—three years and two months—the claimants continued to call for a hearing, and the United States as persistently remained inactive.

At last, in despair of the Government, or its law representa-

* [It is proper to state that the Sherrebeck claim was taken up during the absence at Washington of the then District Attorney.]

tives, taking any part in the detection or defeat of the claim, the Court was compelled to meet and decide it as a case virtually *ex parte*.

The Attorney General says, that "proper estimates have been made" for procuring from Congress the funds to "*keep up the defense*." The public would like to know if the foregoing is an example of the *kind* of defense that was to be "kept up." Where were the government law agents in the time of the Commission? Where Mr. Stanton and staff, and "Assistant Counsel" whilst the case was before the District Court? Where the Attorney General's extra \$80,000 fund, that no part of it could go to this case?—a case in which there is not a particle of "archive evidence," and hence beyond the aid, or necessity, of "photographic exhibits."

The Attorney General says *now*, after the confirmation of the claim by the District Court, and the consequent concentration of public security upon it, that he has "reason to *believe* that the title is a fraud." "*If it be so*, then no quarter," etc.

But how is this hypothetical view of the case to be reconciled with the previous declarations of the Attorney General in the same report, that he had in his hands the "means of *demonstrating* frauds"—by which "it was not difficult to point out *every case* in which a forgery had been perpetrated," and where cases were of "a fraudulent character," to assert them to be so "with *perfect confidence*?" Why is it, that in the Sherrebeck case he has only a "belief?" There is not a plainer or simpler case in the records of California land claims. The Attorney General shows either his ignorance of the case, or a wilful misrepresentation, in the first line of his statement of it. It is not "said to be an Alcalde's grant," as the Attorney General announces. It professes to be under a Prefect's grant. If justice should be done upon it, as I do not doubt, under the skilful management of the counsel now having it in hand, the fact will be the same, that the Attorney General's extra fund for "keeping up the defense" will not have incurred the responsibility, nor have contributed to the cost.

SAN FRANCISCO, December 15, 1860.

When the foregoing letters appeared in journals of the day, the writer had the intention to continue the series to some further extent. A press of other matters prevented. He has been frequently applied to for a collection of the letters in pamphlet form; he has now given them one for that purpose. The best information that we have supposes that the President intends to nominate Black—even to be the successor of Chief Justice TANEY—to occupy the seat of JAY and MARSHALL. If the exposition here made shall have any effect in preventing such an abuse, the time and labor will have been well compensated in a consciousness of having done a valuable public service.

WM. CAREY JONES.

IN THE SUPREME COURT
OF THE
UNITED STATES.

INOCENCIO ROMERO, ET ALS.

APPELLANTS.

vs.

THE UNITED STATES,

RESPONDENTS.

BRIEF FOR APPELLANTS.

SAN FRANCISCO:
WHITTON, WATERS & CO., BOOK AND JOB PRINTERS,
Corner of Clay and Sansome Streets.
1862.

BRIEF FOR APPELLANTS.

On behalf of the appellants, we submit that the decree of the District Court, rejecting this claim, ought to be reversed and the claim confirmed, for the following reasons :

1st. The claimants have such an equity as entitles them to a confirmation, without reference to the concession or grant, the existence and loss of which is clearly established by the proof. If no such concession or grant ever issued, the papers forming the "Expediente," the authenticity of which has not been questioned, establish such an equity in the claimants, as to bind the conscience of the United States Government, and to demand that the claim be confirmed. What are the facts? On the 18 of January, 1843, the three brothers Romero, presented their petition to the Governor, in which they recite that in the last preceding year, they had forwarded to him a petition soliciting a tract of land, which is unoccupied, in the vicinity of the ranchos of Moraga, Lorenzo Pacheco and Julian Will, being the surplus over what belongs to these ranchos. And as this petition was mislaid or had not been acted upon, they now renew the application.

On the same day, the Governor referred the matter, for informa-

tion, to his Secretary of State, Jimeno, by a marginal order endorsed on the petition.

Jimeno, the Secretary, immediately referred it to Antonio Maria Pico, the alcalde of San Jose, within whose district, the land was situated, and directed him to report upon the application, after having first summoned Moraga, Pacheco and Will, the "colindantes," and thus giving them an opportunity to allege whatever they might see proper, against the application.

On the 1st February, 1844, Pico, the alcalde, reported, that the Romeros and the owners of the adjoining ranchos having been confronted, the latter said the grant to the Romeros would not prejudice them in any way. On the contrary, they desired them for neighbors, both for company and for an additional security to their families in that region. He also reported that it had come to his knowledge that one Francisco Soto had claimed the tract in question, some six or seven years before that time ; but that Soto had not in the mean time cultivated or used the land, so as to acquire any right to it. Whereupon the alcalde recommended that it be granted to the Romeros.

On the 4th February, 1844, Jimeno, the Secretary of State, reported to the Governor, that according to the report of Alcalde Pico, as to the good character of the petitioners, and after a summons to the adjoining proprietors, it would appear there was no obstacle to the making of the grant.

On the same day, the Governor made the following decree : " Let the judge of the proper district take measurement of the unoccupied land that is claimed, in presence of the neighbors, *so that it may be granted to the petitioners.*"

On the 21st March, 1844, the Romeros presented another petition to the Governor, in which they say that they appeared before the judge of the Pueblo of San Jose, and requested that he proceed with the measurement, in accordance with the last named decree ; but he was unable to execute the order, because of the absence and other

engagements of the adjoining proprietors ; and inasmuch as they may not soon get these proprietors to assemble, for the purpose of measuring the land, they solicit in the mean time, a grant of the land provisionally, or in such other manner as the Governor shall see fit, so that they may immediately proceed with their planting, before the season is too far advanced. They state that the neighboring proprietors are satisfied with the boundaries, which the petitioners claim, and are desirous of having them as neighbors, as appears from the report of the alcalde and Secretary of State, in the official documents “ which we enclose together with the petition that contains the result to which we limit ourselves.”

On the 23rd March, 1844, Jimeno, the Secretary, reported to the Governor, that in his opinion, the order of February 4th ought to be carried into execution, in respect to the measurement of the land, and as soon as this is done with the least practicable delay, the Romeros can present themselves, together with Soto, who claims that he has a right to the land.

On the same day the Governor made the following decree : “ Let everything be done agreeable to the foregoing report.”

The foregoing papers constitute the “ Expediente” on file in the Surveyor-General’s office.

The deposition of Pico, the alcalde, was taken in the cause, and he testifies not only to the signatures to the papers, but that he received the order for the measurement of the land, and summoned the adjoining proprietors on two separate occasions, for the purpose of proceeding with it. They did not appear, however, and afterwards said that they were prevented by sickness. That after the Romeros had complained to the Governor of his failure to make the measurement, he received another order from the Governor directing him to proceed with it. This was doubtless the order of the 23d March. He says that instead of executing the order, he directed the Romeros to take possession of the land and settle on it ; whereupon one of them (Ino-

cencio) immediately went upon it, built a house and corral, and put his cattle on the place, which he has ever since continued to occupy. Other testimony in the cause, establishes beyond question, the fact of occupation and cultivation, by the Romeros and those claiming under them, from 1844 to the present time.

These facts establish a clear equity in the claimants, which ought to be perfected into a legal title. Their petition was received with favor by the Governor. The Alcalde reported that the adjoining proprietors, the surplus of whose lands was solicited by the Romeros, not only did not object, but desired the grant to be made. The Secretary of State concurred in the recommendation and advised that the lands be measured, in order to ascertain the surplus. The Governor assented, and ordered the surplus to be ascertained, "*so that it may be granted to the petitioners.*" An order was then issued to the Alcalde, to make the measurement. Up to this point in the proceeding it is evident the Governor had acceded to the petition. He was willing they should have the land, and delayed the formal concession and final grant, for the sole purpose of having the surplus segregated from the adjoining ranchos. This was a mere ministerial act, and does not impair the force of the fact, that the Governor, on the 4th February, had decided to grant this surplus to the petitioners, as appears from his decree of that date. The decree amounts but to this: "I accede to the petition and have concluded to grant the surplus as solicited; but before completing the title, it is necessary to have the surplus measured, which I order to be done, after which I will perfect the grant." In other words, it decrees a survey to be made, not to enable him to decide whether or not he will grant the land, but only as one of the proper steps to be taken towards perfecting the title, which he had concluded to grant. He had already made up his mind to grant it; but before proceeding to make the concession in form, deemed it best to have a survey, in order to establish the boundaries and thus avoid disputes with the adjoining proprietors. In effect, it is pre-

cisely the same as if he said in express terms, "I grant you the land, but it must be measured in order to ascertain its boundaries." In California, there are many cases in which within the exterior limits of a grant there is a larger surplus over the quantity granted. In the Fremont case for example, the grant was for eleven leagues, to be taken within certain exterior limits embracing at least one hundred leagues. Before Fremont's claim was confirmed and located, it was competent for the Congress of the United States to dispose of this surplus as it saw fit, subject to Fremont's rights. In that stage of the proceeding if an application had been made to Congress for this surplus, whereupon the matter had been referred to a committee, which had reported in favor of the application, and thereupon an act had passed ordering a survey to ascertain and locate the surplus, "in order that it may be granted to the petitioner," and if the petitioner had thereupon entered into the possession, with the authority of an officer, whose special duty it was to deliver possession in similar cases, and if this possession had continued for many years, without disturbance, or the assertion of any claim on the part of the Government, and if, while the matter remained in this condition the territory had been transferred to another sovereign it would be a hard and rigid rule, which would deny to the claimant, at least an equity in the land. But the exact and technical rules which would apply to a grant by our Government, ought not to prevail in respect to Mexican grants. Ours is a system administered by intelligent agents, under strict rules of proceeding, and their acts are interpreted by laws abounding in nice distinctions and subtle technicalities. The Mexican system was plain, simple, and well adapted to the habits of the people. The first step was a short petition to the Governor. If he required further information on the subject, he referred the matter to his Secretary, or some Alcalde, or "Padre." When their reports came in, the Governor either granted or denied the petition. If he acceded to it, he usually issued a concession first and afterward the formal grant. The

granting power belonged to him alone, subject, however, to the approval of the Territorial Deputation, before the title could become absolutely perfect. In all these cases, therefore, the question to be ascertained is whether the Governor in fact *assented to the petition*. If it appears on the face of the papers, found in the archives, that there was a petition, and “informe,” and that the Governor assented to it, this of itself, establishes an inchoate title, and creates an equity, especially when accompanied with long possession, which our Government and Courts will respect. It matters not in what words, his assent is expressed, provided they are sufficiently intelligible to declare the fact that he does assent. That he did accede to the petition in this case, is evident from the fact that the reports of the Alcalde and Secretary were both favorable—that no opposition was made by the adjoining proprietors, who on the contrary favored the application and that the Governor upon these reports ordered the land to be measured, “*so that it may be granted to the petitioners.*” It is a distinct declaration, that he acceded to their application;—and if the expediente had stopped at this point it would not, we apprehend, have been seriously questioned, that the claimants acquired an equity which ought to be protected. But at the argument in the District Court, it was said on behalf of the United States, that a new face was put upon the proceeding by the Governor’s decree of the 23d March; that at this time, being informed of the pretension set up by Soto to the same land, he simply ordered a survey and directed the Romeros and Soto to appear before him, in order that he might adjudicate their respective claims; and that it does not appear from the archives, that Romero and Soto ever appeared before the Governor, or that any further steps were taken in the matter. It is true, the expediente exhibits no further proceedings; but the archives show the fact, that another rancho called the “Rancho San Lorenzo” was granted to Soto, which has since been finally confirmed to his widow and heirs; (See Jimeno’s Index for the grant to Soto), and the oral testimony

clearly establishes, that Romero and Soto did appear before the Governor, and that on that occasion Soto waived his pretension to this land, in consideration of the grant to him by the Governor, of the rancho "San Lorenzo."

It further appears, that immediately after the 23d March, the Romeros, with the authority of the Alcalde, entered into possession, and they and their vendees have ever since resided on the land. Their right to the possession was not questioned, whilst Mexico continued to exercise dominion; on the contrary, the possession was open, notorious and evidently *bona fide*, under a claim of title, which was recognized by all the "colindantes," and which Soto, nor the Mexican Government, ever attempted to disturb. The expediente, as shown by the proof, consists of several documents, not fastened together. It may have happened, that other documents pertaining to it, were lost or destroyed, during the rough usage to which the archives were exposed, at the conquest of California, as shown by the depositions of Generals Halleck and Fremont, to be found in the record of this case. At all events, the fact that Soto has never asserted any title or claim to the land—that another tract was granted to him about the same time—that the Mexican Government never disturbed or questioned the propriety of Romeros' possession—that the claim of the Romeros was notorious and was acknowledged to be valid by all their neighbors, is strong, if not conclusive, evidence, that Soto abandoned his pretensions to the land, and tends strongly to fortify the testimony of Inocencio Romero, who swears that he and Soto appeared in person before the Governor, and that Soto expressly abandoned his claim, in consideration that the Governor would grant him the tract of San Lorenzo. Unfortunately the Governor, his Secretary, and Soto, are all dead; but Romero, who has no interest in the land, testifies positively to these facts, and the truth of his statement, is established by the circumstances referred to. It is manifest that on the 23d March, the Governor had decided to grant the land to the Romeros, unless it should appear that Soto had

the better right. All the circumstances show, that Soto abandoned his pretensions, as Inocencio Romero swears he did. The only obstacle, therefore, in the way of the grant to the Romeros was removed, and their equity became complete. But it is said that, whatever the Governor may have been *inclined* to do, and however favorably disposed towards the Romeros, yet in fact he did not concede the land to them; and that nothing short of this, can establish an equity. We maintain, on the contrary, that the expediente shows he did accede to their petition; and that his decree of the 23d March, only suspended the matter temporarily, until he should allow Soto an opportunity to be heard. We maintain further that all the facts in the cause, together with the testimony of Innocencio Romero, establish that Soto *was* heard by the Governor and that his claim was abandoned.

If this be so, the original decision of the Governor remained undisturbed. The only obstacle was removed, and the Romeros became the owners of the land, so far as ownership could be conferred by the fact that the Governor acceded to their petition. We do not claim that this conferred the legal title. But we insist, that accompanied with a long and quiet possession, it establishes an equity which the Government is bound to protect.

2d. We do not, however, rest the claim for a confirmation on the "expediente" alone. On the contrary, we rely with confidence on the proof as establishing *beyond a reasonable doubt*, the fact that a formal concession or final grant was issued. It is true, the archives as now found in the Surveyor-General's office, do not show this fact; and we admit that in the absence of such proof, nothing short of the most satisfactory and convincing evidence, should be deemed sufficient to establish the existence and loss of the paper. But if the most convincing verbal proof can, in *any* case, overcome the presumption against the existence of a grant, arising from the want of archive evidence of it, then we think it may be confidently assumed, that it has been done in this

case. We propose to examine the proofs with some minuteness. First in order is the testimony of Inocencio Romero, one of the grantees, and who was one of the original claimants in this cause. Having sold all his interest in the land, however, soon after the proceedings for confirmation were commenced, and his successor in interest having been substituted as a party in his stead, the witness has now no interest in the result. The record contains abundant evidence that the sale was made in good faith and with no purpose to render the witness competent to testify in the cause. The deed from Romero to his vendee Sanjurgo, contains on its face intrinsic evidence of the bona fides of the transaction; and the title under this conveyance is now vested in Tice, under circumstances stated in the affidavits filed in the cause, by virtue of which, Tice was admitted as a party. It is evident from these papers, as well as from the deposition of Romero himself, that he has no interest whatever in the land, and is therefore wholly free from any interest secret or otherwise, in the result of this litigation. His deposition discloses the fact that he is an illiterate man, unable to read or write; but it also contains strong evidence of his candor and simplicity of character, and of the truthfulness of his statements. The slight discrepancies between his testimony and that of Tingley, if there be any, in respect to the manner in which and purposes for which the papers were sent by the former to the latter, are not material and only tend to prove that his statements are not a fabricated story, adroitly gotten up, to tally with the other evidence. What then is the substance of his testimony? It is that he had the exclusive charge of the business of procuring the title for himself and brothers; that they had no agency in the business and never had in their possession any of the papers; that he presented the petition and got from the Governor the order of the 4th February for the measurement of the land; that after the decree of the 23d March, he and Soto went before the Governor and settled their pretensions

to the land, Soto consenting to take the "San Lorenzo" rancho and relinquish all claim to the other; whereupon the land in contest was granted to the Romeros; that the final grant was immediately made out and delivered to the witness in presence of the Governor. That after the cession of California, he sent all the papers, including the grant, by Garcia to Tingley, and has never seen them since. His testimony is explicit and pointed in respect to these facts, and is apparently entitled to full credence.

Geo. B. Tingley also testifies that in the year 1850 he was an attorney at law, residing at San Jose, and had considerable experience in the examination of Mexican grants; that he had often seen the signature of Governor Micheltorena and his Secretary, Jimeno, to grants and other official documents; that he was very familiar with the usual form of such grants and with the kind of paper on which they were written; that in that year (1850) he was employed in conjunction with J. W. Redmond, another attorney, and J. M. Jones, also an attorney and good Spanish scholar, to defend an ejectment suit brought by Peralta against one Garcia and Inocencio Romero, for a part of this land; Garcia having before then purchased the interest of Jose Romero in the tract; that on the trial it was necessary to have the title papers; that Inocencio was sick and unable to attend the trial; that Garcia was sent for the papers and brought them; that he carefully examined the papers before and at the trial, in conjunction with Redmond and Jones; that the trial lasted for several days; that the papers were read and interpreted to the jury on the trial, by a competent interpreter; that amongst the papers was a final grant to the Romeros, purporting to have been signed by Micheltorena and Jimeno, his Secretary; that it had every appearance of being authentic; that he, Redmond and Jones, all agreed that it was a valid and genuine grant; that it was not denied by Peralta and his counsel, that it was a valid grant; but they claimed that Peralta had an older grant which covered the land in contest in that suit, and the contest

was about boundaries, the titles on neither side being denied ; that the papers were delivered to the jury, and at the conclusion of the trial, he saw them in the hands of Sandford, the attorney for Peralta, since which time he has never seen them ; that prior to this, he had examined the title papers at the request of one Attoya, who was about to purchase an interest in the ranch ; that his object was to see if the title of the Romeros was a valid title, and after a careful examination of all the papers, including the grant above referred to, he informed Attoya that he considered the title perfectly valid.

The testimony of this witness, is not only wholly unimpeached, but is entitled to the fullest credence. It is the testimony of an intelligent and highly respectable attorney, who at present fills the office of Register, or Receiver, of the United States, for the land office at San Francisco.

John W. Redmond, another attorney, and the same referred to by the last witness, testifies that for three years he was the County Judge of Santa Clara county, which office he resigned ; that in 1850 his chief professional business as an attorney, was connected with litigation growing out of Mexican grants ; that he was very familiar with such grants, and with the signature of Micheltorena ; that he was employed by Attoya, who was about to purchase an interest in the land, to examine the title of the Romeros ; that he had the papers for that purpose about two weeks ; that he examined them with Tingley and Jones, the latter being a good Spanish scholar, and afterwards the District Judge for that District ; that among the papers was a final grant on stamped paper having every appearance of being authentic, and which the witness believes was authentic ; that nothing was lacking to make the title complete, except the approval of the Departmental Assembly ; that they all concurred in the opinion that the title was good and so advised Attoya ; that witness was employed together with Tingley, to defend the suit brought by Peralta, and he fully corroborates Tingley's testimony, as to the proceedings at the trial. He

says that the papers were delivered to the jury and he has never seen them since.

C. B. Strode, another attorney, testifies that he was formerly a partner of a law firm at San Francisco, composed of Wm. Carey Jones, Patrick W. Thompson and the witness, which firm was extensively employed in the prosecution of land claims before the Board of U. S. Land Commissioners ; that he had become very familiar with the general appearance and character of Mexican grants ; that he had seen Micheltorena's signature very often, and knew it as well as it could be known by comparison and thinks that he could not have been deceived as to its genuineness ; that in 1851 or 1852, Sandford, the attorney, lived at Benicia, and witness met him there ; that Sandford was in great pecuniary distress, and appeared to be partially insane ; that he informed the witness that he had in his possession the title papers and grant of the Romero ranch, and he believed the owners of the ranch did not know where the papers were ; that Sandford offered to show the papers to the witness and did so ; that witness caused them to be interpreted by a competent interpreter and examined them closely ; that among them was a final grant in the usual form, signed by Micheltorena, and he thinks Jimeno ; that it had the usual appearance of such grants, and witness believes that was a genuine grant ; that Sandford proposed to witness to deliver the papers to him to be used for their joint benefit, which he declined ; and thereupon Sandford put them back into a trunk or chest from which he had taken them ; that soon after this, Sandford returned to the State of Georgia, where he died. The witness also states several satisfactory reasons why he felt an interest in examining the papers, and which fixed the facts in his memory. The record also contains abundant evidence of the efforts made by the claimants, to trace up the papers, and to ascertain what had become of Sandford's papers and effects. (See the affidavits of McDaniel, Stetson, Sivan, Whitman, Yeayger, Richmond and Winston.) These witnesses show that the greatest

possible diligence has been used to find the missing papers ; but without success.

The testimony of Francisco Arce was also taken by the claimants, who testifies that in 1844 he was the chief clerk of the Secretary of State ; that he wrote the petition for the Romeros ; that after the decree of the 23d March, Romero and Soto appeared before the Governor, when the latter renounced his claim to the land, and it was therefore granted to the Romeros ; that the grant was drawn up by one of the clerks, signed by the Governor in the presence of the witness, and delivered to Inocencio Romero. We concede that this witness does not occupy a very favorable position ; and that on his cross-examination, he appeared to equivocate to a degree, well calculated to impair his credibility. We do not therefore rely particularly upon his testimony, further than it is corroborated by other evidence. But in the main facts he is corroborated by the testimony of Inocencio Romero, Tingley, Strode, Redmond, and other witnesses.

Jose Jesus Policarpio Mesa, another witness, testifies that in 1844 he resided at San Jose ; that Inocencio Romero, in that year came to the house of witness sick, on his return from Monterey, and had with him a bundle of papers, which he said were the title papers for the ranch ; that he said he had procured the title and had it with him in the bundle ; but the bundle was not opened and witness did not see the papers. Some years after this when Garcia had bought or was about to buy an interest in the land, witness saw the title papers in the hands of Attoyo, who was reading them. Saw the Governor's signature and knows it was genuine.

Ramond Briones, another witness, testifies that in 1845, Inocencio Romero produced his title papers in presence of the witness, and they were read in his hearing by one of the sons of Romero, and that all the "colindantes" conceded the title was in the Romeros.

Mariano Romero, one of the original grantees, who had sold all his interest in the tract to one Campbell, before the petition for confirma-

tion was filed, testifies that he resided in Monterey and had no agency in procuring the title, which business had been entrusted solely to his brother Inocencio ; but in 1844 or 1845 Arce told him at Monterey that the final title had issued. He further testified that he had not seen his brother Inocencio from 1844 to 1852, and therefore had no personal knowledge, in respect to what he had done about the title.

This mass of testimony, so minute in its details, and most of it from intelligent, reliable, and perfectly creditable witnesses, places beyond a reasonable doubt, the fact of the existence and loss of the grant.

We propose to examine the countervailing proof relied upon on behalf of the Government.

First in order is the deposition of Jose Romero, one of the original grantees, who testifies that no grant issued, and that they only procured the order for the measurement of the land. It is apparent from his deposition, that he is an exceedingly ignorant and stupid person, and that either from this cause, or some more culpable one, his testimony is entitled to no weight whatever. He admits that he cannot read or write ; that he had no agency whatever in procuring the title ; that his brother Inocencio had the sole charge of the business ; that he never saw any of the papers, except the order for measurement, and he saw that in the hands of the alcalde ; that he lived at a distance from the land, and but seldom saw his brother ; and when asked how he knows the title did not issue, the only reason he gives is, that he had not seen it ; but says that his brother ought to know more about it than he does. His testimony in respect to the occupation of the land by his brother, is not only contradicted by all the other evidence in the cause, but is in itself a mass of contradictions, incapable of solution. The most charitable construction to be placed on the whole testimony of this witness, is that he is too stupidly ignorant, to testify intelligibly on any subject. When analysed, his testimony amounts to absolutely nothing.

Another witness, Jose R. Mesa, testifies that he was present during

one day of the trial at San Jose between Peralta and Garcia and Romero ; that he cannot read or write ; but whilst he was present, Romero's title papers were read in Spanish in the court, and that he heard read only an order for the measurement of the land, and no final grant. The trial lasted several days and he admits he was present but one day. His testimony on this point is directly contradicted by Tingley and Redmond. Intelligent attorneys engaged in the cause, would be far more apt to understand and to remember what transpired, than an ignorant spectator, who had no interest in the proceedings, and who casually heard read a document in the cause. After the lapse of eight or ten years, the recollection of such a witness, as to the contents of a paper, in which he was not interested, is of no value as opposed to the explicit testimony of two respectable attorneys engaged in the suit. In addition to the unreliable nature of such testimony, it does not follow that a final grant was not produced and read, because he did not hear it. His negative statement, amounts to nothing, under the circumstances, and especially as opposed to the testimony of Tingley and Redmond.

He also testifies that soon after the trial he was present at a conversation between Peralta and Romero, in which the latter admitted, that he had only a provisional license, but no title for the land ; and that he wished to sell out to avoid litigation ; that in 1853 or 1854 he heard Garcia say several times that he had only a provisional title ; but was making efforts to procure the title and wished to sell out to avoid litigation. No one else was present at these conversations. Admissions are at best, the weakest of all evidence, and the fact that no such admissions were made in the presence of this witness, is established by the facts deposed to by Romero himself and by Tingley and Redmond. Unless these witnesses are perjured, it is not in the least degree probable that either Romero or Garcia, the defendants in the suit with Peralta, ever admitted the facts as deposed to by this witness. These parties were all ignorant of our American laws and cus-

toms, and Romero or Garcia may have expressed doubts whether their title would be recognized by our government ; and the witness has possibly confounded it with the original title. Their desire to sell out may be readily explained by the fact, that in those days the most valuable lands, held under the best grants, were so overrun with squatters, that the owner of a league of land was sometimes robbed of his orchard and garden, and even his dwelling so hemmed in with "settler's" (that was the polite name by which they entitled themselves) fences, that he had no means of egress from his front door. It is not surprising that the ignorant, simple-hearted Mexican "ranchero" was anxious to sell, under such circumstances ; and he may well have expressed a doubt, whether a government which tolerated such outrages, would recognize his title. Whatever doubts Garcia or Romero expressed about the title, were unquestionably in reference to our government and courts. Whilst Mexico held the dominion we hear of no such doubts, upon the part of the grantees or others. On the contrary they claimed the land ; built houses and corals upon it ; cultivated it ; grazed their numerous herds upon its valleys and hills ; reared their children upon it, and were recognized by all their neighbors as the lawful proprietors. But when the Americans came their troubles began. They are soon involved in actions of ejectment ; their lands are seized upon by "settlers ;" their title papers must be scrutinized by lawyers ; one of whom abstracts them and offers to sell them to another, on a speculating venture. It is not difficult to see, why Romero and Garcia were anxious to sell and had doubts about their title in 1850 and afterwards.

This is all the oral proof adduced on the part of the Government, to rebut the mass of testimony on behalf of the claimants, to establish the existence and loss of the grant. But in the opinion of the Court rejecting this claim, considerable importance is attached to certain documents produced by the *claimants*, from the office of the Alcalde of San Jose, and to a clause in the deed of conveyance from Jose

Romero to Garcia. The District Court was of opinion, that these documents so strongly repelled the idea that a grant had ever issued, as to overcome the proof to the contrary ; and it was upon these that this branch of the case was mainly decided. We hope to demonstrate, that the District Court wholly misapprehended the purport and effect of these documents, and that no such construction should be put upon them as that given by the Court.

The first in date of these documents, is a petition dated March 31st, 1847, addressed by Jose and Inocencio Romero to Burton, Alcalde of San Jose, in which they state, that some years before, they solicited a tract of land bordering on the lands of Castro, taking the surplus of that tract and those bordering on the lands of Vil (Will) to the North; that the Governor ordered Castro's lands to be measured and that the petitioners were to have the surplus ; but the measurement has never been made, there having been no occasion for it ; that the papers to prove this ought to be in the Alcalde's office ; that the petitioners are two brothers with numerous families, having some stock without having any piece of land on which to raise cattle. Wherefore they pray the Alcalde to provide for them as soon as possible, that they may be enabled to retain and locate their cattle.

On the 5th April, 1847, the Alcalde, Burton, made an order on the margin of the petition, to the effect, that as soon as practicable the order of the Government be proceeded with to its fulfillment.

This petition refers exclusively to the fact of the *measurement*, and is in no respect inconsistent with the existence of a *grant* of the surplus. The grievance they complained of, was the failure to measure the land and set apart the surplus. Until this was done, no boundaries could be fixed, and there was no specific portion of the land which the Romeros could claim as exclusively theirs. Their whole object in the petition was to procure this measurement, in order to ascertain the quantity and establish the boundaries. They very properly refer the

Alcalde to his own records, for evidence of the fact that the Governor had, some years before, ordered the measurement to be made, and they simply ask him to carry that order into effect. In all Mexican grants, one of the usual conditions was, that the grantee should apply to the Judge or Alcalde of the District, to measure the land and establish the land-marks ; and this petition was nothing more nor less, than an application to the Alcalde to perform this duty, the performance of which was indispensable to the grantees, inasmuch as they were entitled only to the surplus which might remain from other grants, after they had been measured and their limits fixed. In ordinary cases, where a certain quantity was granted within larger exterior limits, the grantee usually was in no haste for this judicial measurement, because he occupied the whole, until the particular quantity was assigned to him by a measurement. He could afford to wait patiently, until the tardy Alcalde performed this duty. But the Romeros were differently situated. Without the measurement they could claim no fixed boundaries, nor any specific land, and they therefore very justly said to the Alcalde, that until the measurement was made they could not retain and *locate* their stock. The whole intent and scope of this petition is perfectly evident. They were in urgent need of the measurement, and therefore asked it to be made ; and to impress upon the Alcalde his duty in that respect they referred him to the Governor's order, a copy of which was in the records of his own office. We perceive nothing in all this which in the remotest degree tends to disprove the existence of a grant for the surplus. On the contrary, it evinces that the petitioners considered themselves as rightfully entitled to demand the measurement, in order to locate their lands and fix its boundaries.

But it appears the Alcalde was still tardy in making the survey ; and on the 28th of the following May, Jose Romero presented another petition, in which, after reciting that every citizen has the right of petition, and that the Governor of this Department, in his Proclamation had stated that every citizen should be justly attended to in his

petition he says, that as early as 1844, there was an order issued by the former Government to the Alcalde that there should be a measurement of the land called "Las Juntas," which we solicited—I and my brother Inocencio." He then states that this measurement had not been made, and solicits the Alcalde for a testimonial of the reports which in the year 1844 were sent to the Government, "so that we can be granted the said lands." These last words in quotation marks, are taken from the first translation of the document as found in the transcript; but the translation is incorrect and the proper translation is "so that we *should* be granted the said lands," or "that the said lands *might* be granted to us." (See the deposition of John Argos in the Record.) The sum and substance of this document is, that he desires from the Alcalde copies from the records in his office, of the reports made in 1844 by his predecessor, Alcalde Pico, to the Government, touching the measurement of the land, with a view to the grant which they then solicited. It is somewhat awkwardly expressed, and as Jose Romero could neither read or write, (as he deposes) it was evidently drawn up by some illiterate person. But the meaning is quite obvious. At the date of this petition, the American forces were in the military occupation of California; and in his petition Romero refers to the Proclamation of the Military Governor, in respect to the right of petition for the redress of grievances. He could not have needed the "testimonial" he solicits, "so that the land *can* be granted us," as the erroneous translation has it; because the Mexican Government was no longer in authority in California, and there was no authority in the American Military Governor to grant lands. But with the correct translation the sentence is consistent, and the meaning obvious. On the 31st March he had urgently petitioned the Alcalde, Burton, to have the land measured. He had neglected to do it; and on the 25th of the following May, he asks the Alcalde to furnish him with a "testimonial" from the records of his office, of the reports made in 1844 to the Government, by his predecessor, Pico, in respect

to the measurement of the land, at the time when they solicited the grant.

It is a simple application for copies of the documentary evidence in the office of the alcalde, in respect to the action of the former Government touching the measurement. It no more disproves or tends to disprove, the existence of the grant, than an application, under our system, to the Surveyor-General, for a copy of a preliminary survey, or an order of survey, would disprove the existence of a patent. There is no logical connection between the two facts, and the District Court, in attaching any importance to this document, as inconsistent with a grant of the land, was evidently misled by the erroneous translation.

But it will be remembered, that this petition was signed by Jose Romero alone, who is an exceedingly ignorant person, as is apparent from his deposition in this cause; and who testified that he had no agency in procuring the title papers, and had little or no knowledge of what had been done; any statements, therefore, made by him on that subject, even if clearly or intelligibly made, would be entitled to no weight. But we insist, there is nothing whatever in his petition, which in the slightest degree, is adverse to our position.

Another document is also worthy of notice, and to which we invite attention. There is produced from the office of Alcalde Burton a certified copy of the Governor's order of March 23d, addressed to the alcalde of San Jose, ordering the measurement to be made. This is the same order referred to in the Expediente, and establishes the authenticity of it beyond question. On the 9th April, 1847, Alcalde Burton entered on the margin of this order a decree to the effect that the Romeros may take possession of the land, and that in case any adjoining land-owner demands it, his lands shall be measured. No survey, however, was made under this order, and on the 27th December, 1849, Burton having gone out of office, his successor, Dimmick, on that day issued an order, which recites that in consequence of a dispute between Peralta and the Romeros, concerning their boundaries,

and the matter having once been determined by Gov. Micheltorena, it is therefore ordered that the boundaries be established in the manner specified by the order of the Governor, dated March 23d, 1844, in Monterey, and thereupon he designates a surveyor to make the survey, and orders the parties to be present with their legal documents for the surveyor, so that he may proceed and determine the matter.

It was in all probability, with a view to this contingency, that Jose Romero, in the previous May, had solicited from the alcalde, the "testimonial" specified in his petition. Having a dispute with Peralta about the boundaries, and desiring a survey, he may have wished to be fortified with copies from the alcalde's office, showing the action of the former Government on that subject. In 1847, the archives at Monterey were in such a condition, that it would have been useless to have applied there for copies, (see deposition of Halleck) and therefore he applied to the alcalde. The contest with Peralta, resulted in 1850, in the action of ejectment referred to by Tingley, Redmond and other witnesses, on the trial of which, the title papers were produced. This was a contest as to boundaries only; each party conceding that the other had a valid grant. If in fact the Romeros had no grant, and only an order of survey, never executed, it is very improbable, that Peralta, after an angry contest of several years duration, beginning in 1847, and culminating in a suit in 1850, would have conceded on the trial, the validity of their grant. Himself a native of the country, and claiming the adjoining ranch, he had every opportunity to know, and every motive to contest the validity, of their title. But both Tingley and Redmond testify that he conceded the validity of the grant to Romero, and only contested the question of boundary.

But another document produced by the claimants, has been invoked as decisive of the fact that no grant issued.

In January, 1847, it appears, Jose Romero, by his deed of that date, conveyed to Garcia one half of the land, or rather of his inter-

est in the land ; in which deed is this clause : “ both parties remaining subject to that, if the Government grant it in ownership, and in a contrary case, Garcia will lose equally with Romero, without having cause to reclaim the money given.”

The District Court attaches some weight to this, as an admission, that no grant had issued. But it will be remembered, this deed was made while the Americans were in the military occupation of the country, and after the conquest was complete. It was before the treaty of peace, and therefore the ignorant native population were wholly at a loss to decide what was to be the *status* of their titles under the new Government. They were uncertain whether they would be recognised at all, and looked with distrust to the future. In selling lands at this period, it was very natural, in the uncertainty which prevailed, that they should stipulate in respect to the contingency of the recognition of the title by the new sovereign. This was manifestly what the parties meant, when they inserted the words “ if the government grant it in ownership.” They referred to the existing *American* Government, and not to the defunct Mexican Government.

The deed was very awkwardly worded, and was written by an illiterate person. The grantor could neither read nor write, and admits in his deposition, that he had no agency in procuring the title. It is quite apparent from his testimony, that he was altogether ignorant of the particular steps taken by his brother, in respect to the title ; his whole knowledge on that subject, as he testifies, having been derived from the fact that he saw at one time, in the hands of the *alcalde*, a paper, which, he was told, was an order from the Governor for the measurement of the land. This was all he knew about it.

Under these circumstances, an awkward expression in the deed, merits no rigid criticism, and should receive the most liberal interpretation. By the most literal construction of the phrase in question, it can, however, only be held to apply to the then existing Government, and therefore only amounts to a stipulation, that if the American

Government repudiated the title, the parties were to divide the loss.

On the whole, these documents, not only do not tend to disprove the existence of the grant, but they establish conclusively, the *bonna fides* of the grantees in asserting their title from 1844 to the present time.

But it will perhaps be insisted, that under the recent decisions of this Court, no parol evidence is sufficient to supply the place of record evidence of the grant. We propose to examine these decisions, and think no such inference can be deduced from them. Before proceeding, however, to this examination, we remark, that there is maintained throughout these decisions, a distinction between equitable and legal titles and the character of the evidence by which they are supported. Under the laws, regulations and usages of the Mexican Government, no record was ever preserved of an *unfinished* "expediente." When the petition was presented, a marginal decree was endorsed upon it, by the Governor, referring it to some official person for the proper information. The original paper, with the marginal decree, was usually delivered to the petitioner, that he might procure the proper reports. When the reports were made, all the papers were returned to the Governor, who then made his decision. If he denied the application, the "expediente" which consisted of the petition, marginal decree, reports and the Governor's final decree, was filed and remained in the Secretary's office; but no record was made of the proceedings, and none was required by any law or usage. If the Governor acceded to the petition, he usually made a decree of concession, commencing with the words, "*vista la peticion*," which was annexed to the "expediente," but was not recorded, nor required to be, in any book. On the contrary, the whole "expediente" was frequently delivered to the claimant, to serve as evidence of his title, until it should be perfected. Usually, however, it remained in the Secretary's office until the final grant issued; the issuance of which was, generally, though by no means universally, noted briefly in a book

called the "Toma de Razon." The *original grant* on stamped paper was then delivered to the claimant, and sometimes a copy of it was annexed to the "expediente," and remained in the archives. This was the course of proceeding in making these grants, as is well known to all familiar with the subject; and, as has been frequently deposed to in the numerous cases before the courts. It will be observed, that no record was ever kept, in any book, of these proceedings, prior to the issuance of the grant, and of that, only a brief entry of two or three lines, was made in the "Toma de Razon," giving the date of the grant, the name of the grantee, and the name of the place granted, with its quantity. This Court has uniformly held, that where the usual preliminary steps were taken, and the petition was acceded to, but no final grant had issued, the claimant acquired an *equitable* title, which ought to be confirmed, and especially when accompanied with long possession. In such cases, it is not required that the *record* of the proceedings should be established, because, as we have shown, no such record was ever kept, or was required to be kept. To require *record* evidence of an unfinished "expediente," would be to require an impossibility, and would defeat every such title in California. That this Court does not require it, is manifest from the case of the United States vs. Alviso, 23 How. 318. In that case there was not only no grant, or decree of concession, but the "expediente" was produced by the claimant, and was not found in the archives, nor was there any record or note of it in any book. But being satisfied that the petition, and the permission of the Governor for the claimant to occupy the land provisionally, were genuine, and the possession having been uninterrupted for a series of years, the Court held that these facts established in the claimant an *equitable* title. Alviso could have produced no evidence whatever, that any trace of his provisional title, was found in the archives, because there was no law, regulation, or usage, requiring it. The case at bar has far stronger equities than these, even in the absence of a grant. The archives of the former

Government not only discloses the fact that the preliminary steps were taken, but their petition was actually assented to, and they immediately entered into possession, made extensive improvements, and have occupied the land from 1844 to the present time. If the title rested alone on these preliminary proceedings, accompanied with a long and peaceable possession, the claim should be confirmed on the authority of the case of *Alviso*. In other cases however, where the title rested on an alleged *grant*, not accompanied with possession, and where the grant nor any trace of it, was found in the archives, the Court has established a more stringent rule. Such were the cases of *United States vs. Fuentes*, 22 How. 445.

United States vs. Bolton, 23 How. 341.

United States vs. Luco, 23 How. 615.

United States vs. Palmer, 24 How. 125.

United States vs. Castro, 24 How 346.

In all these cases the grants were produced from the custody of the claimants, and no trace of them was found in the archives. The claim for confirmation was based, not upon a merely equitable title, supported by a long possession, and requiring no record, and the evidence of which may properly have come from the custody of the claimant, but upon a strict *legal* title, evidenced by a grant in due form. When the party relies upon his legal title alone, he is held to strict proof of it. He must show affirmatively, that the preliminary steps were taken ; that the grant issued at the time when it purports to have issued, and, as a general rule, he must show that it was recorded as required by the regulations of 1828. The 9th article of these regulations, is the only one which relates to the recording of grants and is in the following words : "The necessary record shall be kept in a book, destined for the purpose, of all the petitions presented, and grants made, with the maps of the lands granted, and the circumstantial report shall be forwarded quarterly to the Supreme

Government." This regulation was never literally complied with in a single instance in California, and if compliance with its terms be exacted, no grant of land in this State would stand. No book was ever kept, in which the petitions and grants were copied, or in which the maps were delineated. The only book ever used as a record of grants was the "Toma de Razon," and this contained no copy of any petition, grant or map, nor any reference to the map; but only brief memoranda of the names of the grantees, the dates of the grants, and a short description by name or quantity, of the land granted.

When, therefore, the Court, in the cases above cited, requires proof that the grant was recorded, it must be understood to refer to the "Toma de Razon," which was the only record of any grant ever issued by the Mexican Government in California. But we do not understand these decisions as establishing an inflexible rule, that no grant will be deemed valid, unless some memorandum of it was made at the time in the "Toma de Razon." This was a mere ministerial act, over which, the grantee had no control; and it would be an extremely harsh rule, which would annul an honest and formal title, accompanied with long possession, and obtained in the usual mode, after all the preliminary steps were taken, simply because some negligent clerk in the office of the Secretary of State, had omitted to enter in the "Toma de Razon," a brief memorandum of the grant.

We do not understand the decisions of this Court to have established so hard and inflexible a rule. On the contrary, they go only to this extent, to wit, that if the claimant rely on his *legal* title alone, and if his claim be devoid of the equities which arise from the usual preliminary steps to obtain the title, and particularly if it have no support from long possession, honestly acquired, and maintained in good faith, then, in order to avoid the frauds which might be perpetrated by simulated and ante-dated grants, the Court as a general rule will require proof that the grant was recorded according to the usage of the Mexican Government, or in other words, was noted in the

“Toma de Razon,” which was the only book of record. The case at bar is not such case. On the contrary, the preliminary steps were taken; the petition, marginal decree, and reports from the proper officers, are produced, and their authenticity is not denied and is fully established. The grantees immediately entered into possession, and have ever since maintained it in good faith. Their possession was notorious, actual and exclusive, and commenced under the authority, and with the consent, of the alcalde, whose duty it was to deliver such possession. Their title was recognized by the “colindantes” and all others, during the Mexican dominion, and has not been questioned except by the Government in this proceeding. It has been litigated and maintained in respect to the boundaries in the action of ejectment referred to in the record. These facts present far stronger equities than were established in the case of Alviso; and with such equities to support the claim, the presumption is strong that the grant issued. The parol proof appears to be conclusive on that point, and if the Court is satisfied that the grant did in fact issue in 1844, or about that time, it would not declare it a nullity, because the clerk whose duty it was to register it in the “Toma de Razon,” omitted to do it. The failure so to register it is the only omission in the whole proceeding; and the question is, whether this omission is, of itself, necessarily fatal to the grant, conceding it to have issued, or whether it raises so strong a presumption that the grant never issued, as that it cannot be overcome by parol proof. We have endeavored to show, that if the grant did in fact issue, it would not be void simply because it was not registered; and we think the evidence in the cause establishes conclusively the issuance of the grant in 1844, and its subsequent loss. But, in conclusion, we repeat that if there was no grant in form, the claimants have a valid equitable title which ought to be confirmed.

CROCKETT & CRITTENDEN,

Of Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES

No. 180.

INOCENCIO ROMERO AND AL., APP'TS,

VS.

THE UNITED STATES.

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TRANSCRIPT
OF THE
PROCEEDINGS IN CASE NO. 654.

INOCENCIO ROMERO ET AL., CLAIMANTS,

VS.

THE UNITED STATES, DEFENDANT.

FOR FIVE LEAGUES OF LAND IN CONTRA COSTA CO.

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE
THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this twenty-eighth day of February, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Inocencio Romero, *et al.*, for five leagues of land in Contra Costa county, was presented and ordered to be filed and docketed with No. 654, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *Aug. 13, 1853.*

In the same case the deposition of Antonio Maria Pico, a witness in behalf of the claimants, taken before Com'r Alpheus Felch, was filed.

(*Vide* page 5 of this transcript.)

SAN FRANCISCO, *December 21, 1853.*

4 In case No. 654, Inocencio Romero, *et al.*, for five leagues of land in Contra Costa county, the depositions of Elam Brown and José Jesus Policarpio Mesa, witnesses in behalf of the claimants, taken before Commissioner R. Aug. Thompson, were filed.

(*Vide* pages 11 and 12 of this transcript.)

SAN FRANCISCO, *March 2, 1854.*

In the same case the deposition of José Maria Amador, a witness in behalf of the claimants, taken before Commissioner Thompson Campbell, was filed.

(*Vide* page 14 of this transcript.)

SAN FRANCISCO, *December 21, 1854.*

In the same lease, the counsel for the claimants filed the following deed of conveyance as evidence herein, to wit:

(*Vide* page 19 of this transcript.)

SAN FRANCISCO, *January 2, 1855.*

Lease No. 654 was submitted without argument and taken under advisement.

SAN FRANCISCO, *April 17, 1855.*

In the same case Commissioner S. B. Farwell delivered the opinion of the board, rejecting the claim.

(*Vide* page 41 of this transcript.)

And the following order was made, to wit:

(*Vide* page 43 of this transcript.)

[REC. CLXXX, D. T. 1862.]—1

Petition.

5 To the honorable the board of the U. S. land commissioners
appointed to settle private land claims in California:

The petition of Inocencio Romero, Francisco Attoyo, Alvin C. Campbell, James W. Thompson, William H. Mitchell, John M. Jones, C. Yeager, Miguel Garcia, and José Romero, respectfully represent:

That in the year 1844 Manuel Micheltorena, then governor of California, in the name of the Mexican nation, by virtue of authority in him vested, the various laws of Mexico then in force, the laws, usages, and customs of the country affecting grants of land in California, granted in full property to your petitioners, Inocencio Romero and José Romero, with their brother Mariano Romero, the lands and rancho which is unoccupied in the neighborhood of the rancho of the Señor Don Joaquin Morega, Don Lorenzo Pacheco, and Julien Will, being a remainder over and above what belongs to the owners of those ranchos, said lands being situate in the present county of Contra Costa, and more particularly described in the papers and maps relating to said grant of land, copies of some of said papers being herewith filed and the originals to be produced and proved before your honorable board.

And your petitioners further state that conveyances have been made of some portions of said lands, vesting in your petitioners the interests following, that is to say, Inocencio Romero one-third,
6 Francisco Attoyo one-twelfth, Alvin C. Campbell one-third,
and James T. Thompson, William H. Mitchell, John M. Jones, C. Yeager two-twelfths, and Miguel Garcia and José Romero two-twelfths.

Your petitioners further state that at the present time they are unable to produce all the various conveyances above referred to, but so soon as the same can be had they ask leave to file the same as part of this petition.

Your petitioners further state that said lands have been occupied by the original grantees and those claiming under them, from the date of said grant until the present time, and there is no conflicting claim known to your petitioners.

The evidence upon which your petitioners rely in support of this claim consists of papers and maps relating to said grant of land, to be produced and proved, and the testimony of witnesses to be produced before your honorable board.

All of which your petitioners respectfully submit for such action as the justice and nature of their claim may require.

E. O. CROSBY,
Of Counsel.

Filed in office February 28, 1853.

GEO. FISHER, *Secretary.*

7

Dep. of A. M. Pico.

OFFICE OF THE COMMISSIONERS OF LAND CLAIMS IN CALIFORNIA.

This day came before Alpheus Felch, com'r., &c., Antonio Maria Pico, a witness in behalf of claimants, Inocencio Romero *et al.*, being No. 654 on the docket of the said commissioners, and being duly sworn deposed as follows:

The ass't land agent was in attendance.

Questions by Mr. Crosby, att'y for claimants.

1st question. What are your name, age, and place of residence?

Answer. My name is Antonio Maria Pico, my age is forty-three years, and my residence San José, Santa Clara county, California.

2nd question. Look on the paper here presented to you, marked "Exhibit No. 1," with the initials A. F., purporting to be an espediente in the case of the application of Inocencio Romero for a grant of land, which document is hereto attached and made a part of this deposition, and say whether you know the handwriting of Manuel Micheltorena, Manuel Jimeno, and Antonio Pico, and if so, whether their respective signatures appearing on said document are their true and genuine signatures.

Answer I know their handwriting; the signatures on said document are their true and genuine signatures, respectively; the last named is own, and was signed by me as alcalde, at the time
8 of the date of the instrument to which it is attached.

3rd question. Look on the paper now here presented to you, marked "Exhibit No. 2," with the initials "A. F.," purporting to be an espediente for a grant of lands to the same persons, which documents hereto attached and made a part of this deposition, and say whether you know the handwriting thereto, purporting to be the signatures of said Micheltorena and Jimeno, and if so, whether these are their genuine signatures.

Answer. I know them, and these are genuine.

4th question. Look on the paper now here presented to you, marked "Exhibit No. 3," with the initials "A. F.," purporting to be a petition by José Romero to the alcalde, dated May 28, 1847, with the decree of the alcalde, John Burton, and a statement by Antonio M. Pico thereon, which document is hereto attached and made a part of this deposition, and state whether you know the signatures of José Romero, John Burton, and Antonio M. Pico, and if so, whether their respective signatures appearing thereon are their true and genuine signatures.

Answer. I have examined the document. I know the signatures of those persons, and recognize these as their true and genuine signatures, respectively.

5th question. Look on the paper now presented to you, marked "Exhibit No. 4," with the initials "A. F.," purporting to be
9 signed in two places by John Burton, and dated on the 9th day of April, A. D. 1847, which document is hereto attached and made a part of this deposition, and say whether the signature of said

Burton thereto, in the two places in which it appears on said document, is the true and genuine signature of said Burton.

Answer. I have looked at it. The signatures of said Burton thereon are his true and genuine signatures.

6th question. Look on the paper now presented to you, marked "Exhibit No. 5," with the initials "A. F.," purporting to be signed by John Burton, under date of April 5, 1847, which document is hereto attached and made a part of this deposition, and state whether the signature thereto is the true and genuine signature of said John Burton.

Answer. I have examined the document. The signature of John Burton appearing thereon is the true and genuine signature of said Burton.

7th question. Did you know John Burton personally? Have you seen him write, and was he at any time in the exercise of any public office, and if so, where, and at what time?

Answer. I know him personally, and have often seen him write. He was alcalde at San José both before and since the occupation of California by the United States. He is now dead. He was
10 acting as alcalde at that place in the year 1846 and 1847.

8th question. Look on the paper now presented to you, marked "Exhibit No. 6," with the initials "A. F.," purporting to be a deed of sale from José Romero to Francisco Garcia, dated January 15, 1847, which document is hereto attached and made a part of this deposition, and say whether you know the signatures appearing thereon, and if so, whether these are the true and genuine signatures of the persons purporting to have made the same.

Answer. I have examined the document, and I recognize the signatures of the following persons, respectively, appearing thereon as their true and genuine signatures, namely: John Burton, José Fernandez, Pedro Daly, and Antonio M. Pico. The name of José Romero and Maria Garcia were not put to the paper in my presence, but they both acknowledged to me that they made the sale of the land, as mentioned in the document.

9th question. Do you know the land claimed by the Romeros, and referred to in the above-mentioned papers? If yea, state where they are located, and what you know of the boundaries.

Answer. I know the lands. They are located in the county of Contra Costa, near Monte del Diablo. I received an order of Governor Micheltorena to put the coterminous neighbors, the Pa-
11 checos and Moraga, into possession of their lands, and to measure the same for the purpose of separating their land from that of the Romeros. I was directed, by the same order, to put the Romeros into possession of the overplus lands not included in the premises belonging to the others. I summoned the coterminous neighbors to be there when I executed the order, but they did not appear. I did not then proceed to execute it, but afterwards I repeated the summons to them. They did not come at the time mentioned, and afterwards they told me they were sick, and that that was the reason they did not attend. In the meantime the Romeros made complaint to the governor, and I received from him a new order to

carry the former order into effect, upon which I told the Romeros to go there and settle. They did so, and built houses and corrals. They took possession in 1844.

10th question. What is the occupation of the Romeros?

Answer. They cultivate the land. They put cattle on it and have built a house. Inocencio Romero still occupies a portion of the land. The other portions are occupied by persons who have obtained rights in the same, and are carrying on extensive cultivation.

11th question. Look on the paper now here presented to you, "marked Exhibit No. 7," with the initials "A. F.," and
12 annexed to this deposition and made a part thereof, and say whether the signatures of José Bolcoff, R. M. May, and K. H. Dimmick, appearing thereon, are the genuine signatures of the persons by whom they purport to have been made, and whether you are acquainted with their handwriting respectively

Answer. I am acquainted with the handwriting of José Bolcoff, R. M. May, and K. H. Dimmick. The signatures appearing on the document presented as theirs are the true and genuine signatures of them respectively.

12th question. Do you know whether the persons named in your last answer were, at the time of the date of the last mentioned document, in the exercise of any official functions, and if so, what?

Answer. José Bolcoff was alcalde at the mission of San José, and R. M. May and K. H. Dimmick were alcaldes in the town of San José at that time.

Questions by Mr. Greenhow, associate law agent.

1st question. Was any title to the land in question from Governor Micheltorena in favor of the Romeros ever exhibited to you?

Answer. There never was.

ANTONIO M. PICO.

13 This testimony was given in the Spanish language, Mr. Fisher, secretary to the board of commissioners, acting as interpreter.

Subscribed and sworn before me at San Francisco this thirtieth day of August, A. D. 1853.

ALPHEUS FELCH.

Commissioner.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

No. 654.

Dep. of Elam Brown.

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS, &C., &C.,
San Francisco, Dec'r 21st, 1853.

This day, before Com'r R. Aug. Thompson, came Elam Brown, a witness in behalf of claimants, Inocencio Romero *et al.*, on petition No. 654, and being duly sworn deposed as follows:

Present : Claimant's att'y and U. S. associate law agent.

In answer to questions, witness states his name is Elam Brown ; his age fifty-seven years ; residence Contra Costa county, Cal'a.

Question by claimant's att'y.

Do you know the rancho claimed in this case by Inocencio Romero and others? If so, state where it is situated and what you
14 know of its occupation, cultivation, and improvement.

Answer. I first knew said rancho in July or August, 1847. Inocencio Romero was then residing there with his family ; he had a small house, in which he lived, and a small garden enclosed ; he had also a stock of cattle and horses ; he was then engaged in framing the timbers for erecting a large house ; the corral appeared to be two or three years old. Inocencio Romero has continued to reside there to the present time. I have understood said rancho adjoins the Pacheco rancho on the northeast ; Welcher ranch on the north and northwest ; Moraga on the west and southwest ; and the Soto grant on the east and southeast. I never heard Romero claim beyond the stream called the Nueces ; I have known him to make sales to that stream, but not beyond it.

ELAM BROWN.

Sworn and subscribed before me Dec. 25, 1853.

R. AUG. THOMPSON, *Com'r.*

Filed in office Dec'r 21st, 1853.

GEO. FISHER, *Sec'y.*

15

No. 654.

Dep. of José Jesus Policarpio Mesa.

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS, &c., &c.,
San Francisco, Dec'r 21, 1853.

This day, before Com'r R. Aug. Thompson, came José Jesus Policarpio Mesa, a witness on behalf of claimant, Inocencio Romero *et al.*, petition No. 654, and being sworn, his evidence, being in Spanish, was interpreted by the secretary as follows :

Present : Claimant's att'y and U. S. associate law agent.

Witness states his name is José Jesus Policarpo Mesa ; his age fifty-four ; and residence Contra Costa.

Questions by claimant's att'y.

Do you know the rancho claimed in this case by Inocencio Romero and others? If so, state where it is situated and what you know of its occupation and cultivation.

Answer. I know said rancho, and have known it since 1845 ; it is situated about one league from my residence in the county of Contra Costa, and is the sobrante of the Pachecos, and adjoins the ranchos of Bartolo Pacheco, Lorenzo Pacheco, Joaquin Moraga, and Welch. It has been occupied by Inocencio Romero ever since I knew it, in 1845, with his family, and is still so ; he had on it at that time a house, in which he lived ; he also had corrals, fences, cattle, and horses, and a

16 portion of the land is cultivated. He had at one time as many
as 300 head of cattle. He has also planted some fruit trees
and a small vineyard, which premises did not succeed very
well. From the appearance of the improvements I judge they had
been erected some time previously, I cannot say how long.

JOSE JESUS POLICARPIO + MESA.
his
mark.

Sworn to and subscribed before me Dec. 21, 1853.

R. AUG. THOMPSON, *Com'r.*

Filed in office Dec'r 21st, 1853.

GEO. FISHER, *Sec'y.*

Dep. of José Maria Amador.

UNITED STATES LAND COMMISSION,
San Francisco, March 2nd, 1854.

On this day, before Com'r Thompson Campbell, came José Maria Amador, a witness in behalf of claimant, Inacio Romero *et al.*, case No. 654, who, after being duly sworn, deposed as follows, his evidence being interpreted by the secretary :

1st question. What is your name, age, and place of residence?

Ans. My name is José Maria Amador ; I am fifty-three years of age ; and I reside in San José.

2nd question. Are you acquainted with Ignacio Romero, José Romero, and Mariano Romero? If yea, state what you know
17 of their having received a grant from the Mexican government, and where the same is situated.

Ans. I am acquainted with said persons. In 1844 said persons obtained a concession, subject to establishing of the bounderies of the adjoining ranchos. The said adjoining ranchos belonged to the following persons : William Walsh, Joaquin Moraga, Juan Bernal, Francisco Pacheco and Mariano Castro. The grant referred to was to be composed of the sobrante of the ranchos belonging to the last named persons.

3d ques. State what you know of the occupation of the lands above described by the Romeros.

Ans. In the year 1844 the Romeros went upon the land and built a wooden house, and put on it about one hundred head of cattle the same year, and about fifteen or twenty tame horses.

They also cultivated a portion of the land the same year. In the next year after they went there they built corrales, and enclosed a portion of the land, and since that time they have made improvements on the said wooden house with adobes.

Law agent present.

JOSE M^a + AMADOR.
his
mark

18 Sworn and subscribed before me the 2nd day of March, A. D. 1854.

THOMPSON CAMPBELL, *Com'r.*

Filed in office March 2nd, 1854.

GEO. FISHER, *Sec'y.*

Exhibit No. 1, annexed to deposition of A. M. Pico.

Sello quinto medio real. Habilitado provisionalmente por la aduana marítima del puerto de Monterey, en el departamento de los Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.
MICHELTORENA.

{ Ad^a Marit^a de Monterey }
[SEAL.] }

MONTEREY,
Ene^o. 18, de 1844.

Ynfe. el Srio del despacho, previos los qe. crea necesarios.

MICHELTA.

EXMO. SR. GOBERNADOR: Los ciudadanos Ynoceute, José y Mariano Romero, hermanos naturales de este departam^{to}, ante la recta juestificacion de V. E. con el mas debido respeto en derecho decimos:

Que el año pp d^o acompañamos á V. E. una instancia en solicitud de un parage que se halla valdio en los inmediaciones de los ranchos de los señores Dn. Joaquin Moraga, Dn. Lorenzo Pacheco y Julian Willsobrante que resulta á los dueños de los ranchos espresados, y como la ya mencionada solicitud ha podecido estrabio, ocurrimos de nueve á V. E. esperando de su acrisoloda vondad y justificacion se sirva decretar á nuestro favor en caso que nuestro pedido no embaraze la propiedad particular de algun individuo.

P. T. á V. E. rendidamente pedimos y suplicamos acceda á nuestra peticion de los que le viviremos eternamente reconocido jurando no ser de malicia y lo necesario.

Monterey, Enero 18, de 1844.

YNOCENTIO ROMERO.
JOSÉ ROMERO.

dispone el Exmo Sor. Gobernador, informe el Alcalde l del pueblo de San José, sobre el contenido de la precedente instancia paciendo citacion de los señores Moraga, Pacheco y Wil. para que espongan el derecho que les convenga y concluido que se tuvo vuelva á esta Sria.

Monterey, Enero 18, de 1844.

MANUEL JIMENO.

Sello quinto medio real. Habilitado provicionalmente per la aduana tarit^a del puerto de Monterey, en el departamento de los Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cua-enta y cinco.

PABLO DE LA GUERRA.
MICHELTORENA.

20 [SEAL.] Habiendo sido acarendos el suplicante en esta instancia y los colindantes del terreno que se solicita segun digeron estos que los S. S. Romeros no les perjudicaban en nada y que se les servian de compañía p^a la seguridad de sus familias en aquella parte, tambien este juzgado tiene conocimiento que el individuo Fran^o

Soto hace seis o siete años á que pretendio el terreno que se menciona mas de este tiempo do ha hecho uso ni cultivo que le contemple con algun derecho y per lo tanto los solicitantes en esta instancia de mi parte sin considerador acreedorera la gracia que piden.

Pueblo de San José Guadalupe, Feb. 1, de 1844.

ANTONIO MARIA PICO.

EXMO SOR. GOBERNADOR: Por el informe que dá el alcalde 1 del pueblo de San José, previa citacion de los dueños de los ranchos que colindan con el terreno que de pretenden y la buena conducta de los interesados parece que no hay inconveniente alguno pr. que se les haga la concesion q°. pretenden si asi fuere la aprobacion de V. E.

Monterey, Feb., 4 de 1844.

MAN'L JIMENO.

MONTEREY, Feb., 4 de 1844.

21 Espidase por el juez respectivo el terreno pretendido baldio como los colindantes y diga lo que resultare para concederlo á los suplicantes.

MICHELTORENA.

Filed in office Aug. 13, 1853.

GEO. FISHER, Sec'y.

Deeds from I. M. Romero to Alvin C. Campbell.

Know all men by these presents that I, Mariano Romero, of the county of Monterey, and State of California, have, this 15th day of March, 1854, for and in consideration of the sum of one thousand dollars, remised, released, and forever quit claim unto Alvin C. Campbell, all my right, title, and interest in and to one third part of the Rancho "Las Justos," situated in the county of Contra Costa, and State of California, said Rancho being formerly owned by Inocencio Romero, José Romero, and Mariano Romero, to have and to hold the said land together with all appurtenances thereunto belonging in any wise, this deed being given on this date from the fact that the deed made by me about one year and a half ago was, before being recorded, destroyed by fire

In witness whereof I have hereunto set my hand and affixed my seal this 15th day of March, 1854.

his
MARIANO + ROMERO.
mark.

[SEAL.]

22 On the 8th line from the top the word "third" written before signing.

Witness: L. ARCHER.

STATE OF CALIFORNIA,

County of Santa Clara, ss:

On this March 16th, 1854, personally appeared before me, a notary public in and for said county, Mariano Romero, known to me to be

the person described, and who executed the foregoing deed of conveyance, who acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

[SEAL.] Witness my hand and notarial seal, at said county, the day and year last written.

L. ARCHER,
Notary Public.

Filed in office Dec. 21, 1854.
(Signed)

GEO. FISHER, *Sec'y.*

“B.”—*Translation of exhibit “A.”*

Fifth class stamp, one sixteenth of one dollar. Issued provisionally by the maritime customs of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

[L. s.]

PUBLO DE LA GUERRA.
MICHELTORENA.

23 MONTEREY, YOUR EXCELLENCY: The citizens Inocente, *Jan'y* 18, 1844. José, and Mariano Romero, brothers, na-

tives of this department, before the right-state report, having first ous equity of Y. E., with due respect and taken such steps as he may according to law, state that last year we deem necessary. forwarded to Y. E. a petition soliciting

MICHELTORENA. a tract, which is unoccupied, in the neighborhood of the ranchos of the Señor Don Joaquin Moraga, Don Lorenzo Pacheco, and Julien Will, being a remainder, and over and above what belongs to the owners of said ranchos; and as said petition has been mislaid, we present ourselves anew to your excellency, hoping from your refined goodness and equity that you will please to decree in our favor, in case our request does not infringe upon the private property of any individual.

Wherefore we humbly solicit and pray Y. E. to accede to our petition, whereof we will ever feel grateful; and we make oath that we do not proceed through malice; adding all other requests, ratifications, &c.

Monterey, January 18, 1844.

INOCENTE ROMERO.
JOSÉ ROMERO.
MARIANO ROMERO.

His E. the governor decrees that the first alcalde of the town of San José report upon the contents of the foregoing petition, 24 summoning the Señor Morega, Pacheco, and Will, so that he may allege whatever cause they may deem proper, and all being concluded, let the papers be returned to this office.

Monterey, Jan., 1844.

MANUEL JIMENO.

Fifth class stamp $\frac{1}{6}$ of 1 d., issued provisionally by the maritime customs of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

[L. S.]

PABLO DE LA GUERRA.
MICHELTORENA.

The petitioners in this case, and the owners, owners of lands bounded by the tract which is claimed, having been confronted, the latter said that the Señors Romero did not prejudice them in any way, but on the contrary they desired them to be their neighbors, both for company and for the additional security of their families in that region; it has also come to the knowledge of this tribunal that one Francisco Soto claimed the tract in question some six or seven years ago. But in this time he has neither used nor cultivated it in any way to gain any right thereto; wherefore the petitioners appear to me entitled to the favor they ask.

Town of San José Guadalupe, Feb'y 1, 1844.

ANTONIO MA. PICO.

YOUR EXCELLENCY: According to the report of the first alcalde of San José, after summons to the owners of the ranchos that
25 bound the tract in question, and as to the good character of the claiming parties, it would seem there is no obstacle to making the grant they claim if your excellency approves of it.
Monterey, Feb. 4, 1844.

Let the judge of the proper district take measurement of the unoccupied land that is claimed in presence of the neighbors, and certify the result, so that it may be granted to the petitioners.

MICHELTORENA.

Filed in office Feb'y 28, 1853.

GEO. FISHER, *Sec'y.*

Exhibit No. 2, A. F., annexed to dep. of A. M. Pico.

Sello quinto medio real. Habilitado provisionalmente por la aduana maritima del puerto de Monterey en el Departm^{to} de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA,
PABLO DE LA GUERRA.

MONTEREY, 23, de 1844.

Exmo. SOR. GOBERNADOR: Los Ciudadanos, Inocencio Mariano y José Romero vecinos de este distrito ante
Infe. el Srio del Despacho. la justificacion de V. E. con el debido respeto y como mas haga lugar
MICHELTORENA. en derecho esponemos: que habiendo ocurrido al Sor. Juez del
26 pueblo de San José á efecto de que procediese á la medicion del terreno que pedide que V. E. dispuso en decreto de 4 del mes po. po. no pudo cumplir en esta superior determinacion por motivo de hallar se ausenter y ocupador los colindantes que indicamos; y

como ha de suceder Exmo. Sor. que estos individuos no se reunar muy pronto por lo primero ó segundo nos vemos en la necesidad de venir á suplicar á V. E. nos haga la gracia de favorecernos concediendonos el parage espresado ya sea provisionalmente á como V. E. tuviere á bien á fin de que podamos (antes que se pase el tiempo) empezar hacer nuestros labores y otros trabajos puer los colindantes estan conformes con los limiter que citamos y deseosos que vayamos á ser sur vecinos como consta por el informe del referido juez y el del Sor Srio del despacho que obran on el éspediente que á V. E. debidamente acompañamos como igualmente la solicitud que contiene el resultado á que nos contraemos. Por tanto á V. E. rogamos provea como pedimos de lo cual recibiremos gracia y justicia. Jurando lo necesario.

Monterey, Marzo 21, de 1844.

INOCENCIO ROMERO.
MARIANO ROMERO.
JUAN ROMERO.

27 Sello quinto, medio real. Habilitado provisionalmente por la adauana marítima del puerto de Monterey, en el departamento los Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.
MICHELTORENA.

[SEAL.]

EXMO SEÑOR GOBERNADOR: Creo por conveniente que se cumplo con lo que ha dispuesto S. E. pa. que se mida el terreno pretendido, y luego que esto se verifique, con la menor demor que sea posible, puede ocurrir en el Sr. Romero, en union del Sr. Soto, quien dice tienen derecho al mismo terreno. El Sup^r discernim^{to} de V. E. resolvera lo mejor.

Monterey, 23 de Mzo, de 1844.

MAN'L JIMENO.

MONTEREY, Mzo 23, de 1853.

Obrese en un todo conforeme el anterior informe.

MICHELTORENA.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y*.

“D.”—*Translation of Exhibit “C.”*

Fifth class stamp, one-sixteenth of a dollar; issued provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

28

[L. s.]

MICHELTORENA.
PABLO DE LA GUERRA.

YOUR EXCELLENCY: The citizens Inocencio, Mariano, and José Romero, residents of this district, before the equity of Y. E., with due respect, and to the full intent of the law, do set forth that we appeared before his honor the judge of the pueblo of San José to obtain

that he should proceed to the measurement of the tract of land which we have solicited according to the tenor of Y. E. decree of the 4th ulto., but that he was unable to execute that superior order, for the reason that the owners of the neighboring lands, whom we indicated, were absent and engaged, and as it will happen, Y. E., that those individuals will not meet very soon for one or other of the two said causes, we see ourselves in the necessity of soliciting Y. E. to do us the favor of granting to us the said tract, either provisionally or in such a manner as Y. E. shall deem fit, so that we may (while it is yet time) commence our planting and other works; since the owners of neighboring lands are satisfied with the boundaries we state, and desirous of having us for neighbors, as appears from the report of the judge aforementioned, and that of the hon. secretary of state, contained in the official document which we duly enclose to your
 29 excellency, together with the petition that contains the result to which we limit ourselves.

Wherefore we solicit your excellency to accede to our request, thus conferring favor and justice, and we make oath according to law.

Monterey, March 21, 1844.

INACIO + ROMERO.
 MARIANO ROMERO. ×
 JUAN ROMERO. ×

Fifth class seal, one-sixteenth of one dollar; issued provisionally by the maritime customs of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

[L. s.]

MICHELTORENA.
 PABLO DE LA GUERRA.

YOUR EXCELLENCY: I think that Y. E's order should be carried into effect in regard to the measuring of the land that is claimed; and as soon as this is accomplished with the least practicable delay, Señor Romero can present himself joined with Señor Soto, who says that he has a right to the same tract.

Your excellency's superior discernment will determine what is best.
 Monterey, March 23, 1844.

MANUEL JIMENO.

Let everything be done agreeably to the foregoing report.

MICHELTORENA.

30 Filed in office Feb'y 28, 1853.

GEO. FISHER, *Sec'y.*

H. H. No. 3, A. F., annexed to dep. of A. M. Pico.

Habiendo sido llamado el Sor. Don Antonio Maria Pico el persona que esta alcalde en el año de 1844, y habiendo preguntado sobre la materia de los Sres. Romeros tocantes á los colindantes si se pudiera sentar en dicho sitio pretendido llamado los puntos, el Sor. Don Joaquin Moraga y el Sor. Don Lorenzo Pacheco dijeron que por

su parte se los podia concederse á los Sres. Romero el sobrante de terreno que nor ha pertenesca.

Pueblo de San José de Gaudalupe, 27 de Mayo, de 1847.

ANTONIO MARIA PICO.

Jurada ante mi, juez de paz.

JOHN BURTON.

OFFICINA DEL PUEBLO DE SAN JOSÉ, 28 de Mayo, de 1847.

Procedio el interesado conforme el orden del supremo gobierno y si algunos de los colindantes hará embaraso, que si manda la medicion de sus terrenos segun lo mandado del gobierno y en caso que no quieren cumplir siga U. con su trabajo.

JOHN BURTON.

para que se diesen las medidas del terreno llamado los sientos que pedimos en compañía yo y mi hermano Inocencio Romero con preba citacion de los colindantes lo que esta presente no se á verificado lo que si suplicamos á V. se serva con primer magistrado de este juzgado se aga una informacion ó se nos de un testimonio por el alcalde que fué en el año cuarenta y cuatro de los informes que se pasaron al gobierno de que se nos podra agraciarse con otras tierras. P. T. suplicamos se sirva proveer con piedad á favor del que reclama.

Filed in office Aug. 13, 1853.

Translation of Exhibit No. 3, A. F.—Recorded in Ev. Book, vol. 17, p. 492.

To the Constitutional Alcaldé:

The subscriber of this humbly representation has the honor to apply to you, founded on the right of petition which the law grants every citizen, and as likewise his excellency the governor of this department recognises in his proclamation that every citizen be justly attended to in his petition and claims. As early as the year 1844, there was sent an order from the former government to this justices' court, that there should be made a mesuration of the land called Juntas, which we asked for. I, together with my brother, Inocencio Romero, after a previous summons of the bordering land owners, which up to the present time has not been carried out. What we now beg of you is, that you will please, as first magistrate of this justice's court, to mark out a report that we be given a testimonial of the reports which in the year '44 were sent to the government, so that we can be granted

said lands. Wherefore, we pray you to be pleased to provide charitably in favor of the claimant.

Puebla de San José Guadalupe, 28th of May, 1847.

JOSÉ ROMERO.

[Marginal.]

OFFICE IN PUEBLO DE SAN JOSÉ, 28th May, 1847.

The interested party will proceed according to the order of the supreme government, and if any of the bordering land owners shall make any impediment a measurement of their lands is ordered according to the order of the government, and in case they do not wish to comply you will pursue your work.

JOHN BURTON.

33 Don Ant^o M^a Pico, the person who was alcade in the year 1844, having been called, and having been questioned on the subject of Romero, regarding the bordering land marks, if they could settle on said land claimed, called Las Juntas: Don Joaquin Moraga and Don Lorenzo Pacheco declared that, for their part, the surplus of land which does not belong to them can be granted to Mrs. Romero.

Puebla de San José de Guadalupe, 29th of May, 1847.

ANTO. MARIA PICO.

Taken before me, a justice of the peace.

JOHN BURTON.

Exhibit No. 4, A. F., annexed to dep. of A. M. Pico.

Sea de acuerdo que en el dia 9 de Abril, 1847. Ordena á los interesados de tomar posesion de los terrenos mencionados segun el orden del gobierno y á mas ordeno que en caso que se esponga algunos colindantes que se manda la medicion de sus terrenos.

JOHN BURTON.

El E. S. Gobernador ha dispuesto que se proceda á la medicion del terreno sobrante que solicitan los Señores Romero y que si fuere necesario medir los ranchos inmediatos que tambien se efectue la espressa medicion en la inteligelencia que los que solgan agraciados, seran los que satisfagan el corte pendiente de los gastos.

Y en cumplimiento de otra superior orden lo digo á V. para su conocimiento egecucion.

34 Dios y Libertad, Monterey, Marzo 23, de 1844.

MANUEL JIMENO,

Secretario del Despacho, Sor Alcalde 1^o. del Pueblo de San José.

I do hereby certify that the above is a true copy of the original found in this office. In witness whereof, I have hereunto set my hand and seal this 9th day of April, A. D. 1847.

JOHN BURTON, *Magistrate.*

P. D. para este documento al S. Don José Miguel Garcia y pasa que conste lo firmo.

San José 9 de Mayo, de 1849.

JOSÉ ROMERO.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

Translation of exhibit No. 4, A. F. dep.—Recorded in ev. B., vol. 17, page 493.

His excellency the governor has ordered that there be proceeded to the mensuration of the surplus of land solicited by Messrs. Romero, and if it should be necessary to measure the immediate ranchos that this measurement also be executed, in the understanding that those parties who may become grantees shall be those that satisfy the cost springing out from the expenditures. And in compliance with
35 said superior order, I communicated it to you for your information and execution. God and liberty.

Monterey, March 23rd, 1844.

MANUEL JIMENO,
Secretary of State.

To the 1ST ALCALDE of the pueblo of San José.

[In the margin.]

Be it done accordingly on the 9th of April, 1847.

The interested parties will proceed to take possession of the mentioned lands according to the order of the government; and I further order that in case any bordering land owner demanding it, a mensuration of his lands be ordered.

JOHN BURTON, *J. P.*

[In English.]

I do hereby certify that the above is a true copy of the original found in this office. In witness whereof, I have hereunto set my hand and seal this 9th day of April, A. D. 1847.

JOHN BURTON, *Magistrate.*

Be this document sent to Don José Miguel Garcia, and to attest it I sign.

San José, 9th of May, 1849.

JOSÉ ROMERO.

36

Exhibit No. 5.

Presentado y admitido que se pasen lo mas pronto posible á cumplir con el orden del superior gobierno para su debido cumplimiento.

Oficina del magistrado del Pueblo de San José, 5 de Abril, de 1847.

JOHN BURTON.

Sor. Juez de Paz del Pueblo de San José Guadalupe: José Romero ante V. con el mayor respeto, diciendo que hace algunos años que tenga solicitando un pedazo de terreno en el cañada de San Ramon y colinda con los terrenos que pertenece al Sr. Mariano Castro tomando el sobrante de lo que

lo espresa en el titulo del Sor. Castro (que son des leguas) y entonces colindando con los terrenos del dijunto Wil por el Norte. Sor. Juez. El Exmo Sor. Gobernador mando que me mediese los terrenos del Sor. Castro y que si nos diera posesion del sobrante pero nunca se ha cumplido por no haber lugar los papeles debe estar en el juzgado de este pueblo que conste del presente orden, Sor. Juez humildemente esponga á V. que somos dos hermanos y con gran numero de familia teniendo algunos bienes de campo y sin tener un pedazo de terreno por criarlos por lo cual suplicamos lo mas pronto que se puede para que podamos ir á fincar y meter nuestros bienes. P. T. A. V. S. Rendidamente suplico de proveer como llebo pedido que es gracia que espero de V. sus incuores subititos.

JOSÉ ROMERO + CRUZ. INOCENTE ROMERO.

37 Pueblo de San José 31 de Marzo de 1847.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

Translation of exhibit No. 5, A. F. Dep.—Recorded in Ev. B, vol. 17, p. 694.

Sir justice of the peace of the pueblo of San José de Guadalupe:

José Romero, with the utmost respect represent before you, that there are some years since I solicited a piece of land in the Cañada de San Ramon, and bordering upon the lands belonging to Don Mariano Castro, taking the surplus of which the title deed of Mr. Castro, spears, (which are two leagues,) and then bordering on the lands of the defunct vil to the north. Nor, sir, his excellency the governor ordered the lands of Mr. Castro to be measured, and that we should be given possession of the surplus; but it has never been complied with, as there has never been any occasion. The papers to prove this order ought to be in the justice's court of this pueblo.

Sir, I humbly represent to you that we are two brothers, and with a numerous family, having some country stock, without having any piece of land wherever to raise cattle. Wherefore we pray you to provide for us as soon as you can, that we may be enabled to go
38 to retain and locate our stock.

Therefore I humbly pray you to provide as I have asked, which is a favor I expect of you.

Your humble servants,

JOSÉ ROMERO, + his cross.
INOCENCIO ROMERO, “ “ “

PUEBLO OF SAN JOSE, 31st of March, 1847.

[In the margin.]

This having been presented, it is admitted that as soon as possible there be proceeded to comply with the order of the superior govern't for its due fulfillment.

Office of the magistrate of the pueblo of San José, 5th April, 1847.

JOHN BURTON, *J. P.*

[REC. CLXXX, D. T. 1862.]-2

Exhibit No. 6, A. F., annexed to dep. of A. M. Pico.

En el pueblo de San José Guadalupe de la Alta California, á los quince días del mes de Enero del año de mil cuatro cientos cuarenta y siete anti me Juan Burton y ante los testigos presentes, Don Guillermo Castro, Don Pedro Davis, y Don José Fernandez, comparecieron los Señores José Romero y Francisco Garcia, y el primero dijo parto donacion de la mitad del terreno que tiene solicitado en compañía de Inocencio Romero á d'ho Garcia por el valor de sesenta pesos (60)

39 que tiene recibido y para que en lo venidero no puedan los herederos de José Romero tener accion de d'ho parte del mencionado terreno lo firmaron José Romero su esposa Maria Garcia y los testigos dichos, que dando hambor sujetos á que si el gobierno lo consede en propiedad y de lo contrario perdera gracia lo mismo q. Romero sin tener accion de clamar el dinero dado. Para lo cual circunstancia ante pongo mi autoridad firmandolo y que sea valedera esta escritura.

JOSÉ ROMERO.

JOHN BURTON, *Alcalde.*MARIA GARCIA, *como testigo.*JOSÉ FERNANDEZ, *como testigo.*PEDRO DAVIS, *como testigo.*

Queda tomada razon en el libro de solares en el año de 1849.

Fojas treinta y cuatro.

ANTONIO MARIA PICO.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.**Translation of Exhibit No. 6. A. F.*

In the pueblo of San José Guadalupe, in Upper California, on the 15th day of January, in the year one thousand "four" hundred and forty-seven, (probably ought to be 1847,) before one Juan Burton and the present witnesses, Don Guillermo Castro, Don Pedro Davis, and

40 Don José Fernandez, appeared José Romero and Francisco Garcia, and the first said that he made a donation of half of the land he had solicited jointly with Inocencio Romero to said Garcia, for the consideration of sixty dollars, which he has received.

And that in future the heirs of José Romero may not have any cause of action to said part of said land, José Romero, his wife, Maria Garcia, and the said witnesses subscribed hereunto, both parties remaining subject to that if the government grant it in ownership, and in a contrary case, Garcia will loose equally with Romero, without having cause of action to reclaim the money given.

In evidence whereof, I subscribe officially, so that this deed may be valid.

JOSÉ ROMERO. +
MARIA GARCIA. +
JOHN BURTON, +
Alcalde.

In witness: JOSÉ FERNANDEZ,

PEDRO DAVIS,

As witnesses.

Entered in the book of lots in the year 1849, in folio 134.

ANTO. MA. PICO,
Alcalde.

Exhibit No. 7.

JUZGADO DEL PUEBLO DE SAN JOSÉ DE GUADALUPE.

Habiendo algunos disputos en conforme art dentro las letras
41 dentro de Domingo Peralta y José Romero y Inocencio Romero
y por cuanto dichos asuntos han sido una vez determinado por
el gobierno Dⁿ Manuel Micheltoarena, gobernador de California, ahora
es mandado por esta corte de justicia que los dichos linderos sean
establecidos y ajustado segun la manera especificada por los ordenes
del gobernador, con fecha de 23 de Marzo de 1844. Dado en Monterey
y amas es ordenado de este corte que el S^ror S. C. dyman el autorisado
agrimensor del gobierno si procederá lo mar pronto que sea practicable
al lugar, para que corre dichos lineas y los dichos partidos interesados
seran presentes con sus documentos legales para dicho agrimensor para
que dicho individuo procedera y determinara sobre el asunto.

Y amas es advertido que el persona que sea projetado de dicho jus-
ticia pagare todos los gastos segun el decreto del espresado gobernador.

Dado debajo mi mano este 27 dia de Diciembre de 1848.

K. H. DIMMICK,
1st Alcalde.

El que subscribe abajo desde que ha vendido su propiedad del ter-
reno de Don José Miguel Garcia p^r mil pesos en plata y entre-
42 gado mis documentos y terrenos d^{ho} S^ror Garcia y recibido los
mil pesos hoy el dia ante el Sr. alcalde y presente testigos de
ass'ta y para que conste lo formo ante sitado juzgado de S. José á q. de
Mayo de 1849.

JOSÉ ROMERO BENDE,
Su Cruz.

Queda obligado de todo tho hai alguno reclamo sobre sitado terreno
quedo responsable devolver los mil pesos ó mas, digo ante s^ror alcalde
y presentes testigos.

José Romero, pongo cruz en señal de firma, A. N. Smith. Ayaton
Ruis, José Romero, alcalde del distrito de San José.

Queda tomada razon en el libro de solares á fojas 186.

R. M. MAY,
Alcalde.

Filed in office Aug. 13, 1853.

GEO. FISHER, *Sec'y.*

Translation of Exhibit No. 7. "A. F."

JUSTICE'S COURT OF THE PUEBLO SAN JOSÉ GUADALUPE.

There being some disputes as to the boundaries between Domingo
Peralta and José Romero and Inocencio Romero; and whereas
43 said matters have once been determined by the Governor Michel-
toarena, governor of California:

Now, therefore, it is ordered by this justice's court that said boundaries be established and adjusted in the manners specified by the orders of the governor dated 23 March, 1844, given in Monterey.

And it is further ordered by this court that Mr. L. C. Lyman, the authorized surveyor of the government, proceed as soon as practicable to the place to run said boundaries, and said interested parties will be present with their legal documents for said surveyor, so that said individual proceed and determine this matter.

And it is further observed that the person who may profit by said act pay all the costs, according to the decree of said governor.

Given under my hand this 27 day of December, 1847.

H. S. DIMIRICK,
1st Alcalde.

The undersigned says that he has sold his ownership to the land to D. José Mig'l Garcia for one thousand dollars in silver coin, and I have delivered my documents and the land to said Garcia and received the
thousand dollars to-day before the alcalde and present witnesses,
44 and in evidence thereof I sign before said justice's court of San
José, on the 9th of May, 1849.

his
JOSÉ + ROMERO.
mark.

Bende.

I bind myself forever that if any claim should arise to said land I am responsible for the return of the thousand dollars, which I declare before the alcalde and present witnesses.

JOSÉ ROMERO. +

I put a cross signification of a signature.

AGATON RENS,
Alcalde of the District.

Witness: N. B. SMITH,
JOSÉ BOLCOFF,
of San José.

Entered in book of lots on folio 186.

R. M. MAY, *Alcalde.*

Opinion by Com'r Farwell.

INOCENCIO ROMERO *et al.* }
vs. } Lands in Conta Costa county. No. 654.
THE UNITED STATES. }

In this case the petitioners have placed on file copies of an espediente and proceedings preliminary to the issue of a grant for a surplus of several claims therein named. The first espediente dated the 18th day of January, 1844, and a correspondence kept up on the
44 subject with the several departments of state to the year A. D.
1849.

But it does not appear that any grant was ever issued to any person, and no equitable right appears on the part of any of the petitioners to a confirmation.

We are of the opinion that the claim is invalid, and a decree will be entered adverse to the petition.

Rejected.

Filed in office April 17, 1855.

GEO. FISHER, *Sec'y.*

Decree.

INOCENCIO ROMERO *et al.* }
 vs. } Lands in Contra Costa county. 654.
THE UNITED STATES. }

In this case, after hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioners is not valid; it is therefore decreed that the application for a confirmation thereof be denied.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office April 17, 1855.

GEO. FISHER, *Sec'y.*

46

Order.

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby—

Ordered, that two transcripts of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE
THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claim in the State of California, do hereby certify the foregoing forty-three pages, numbered from 1 to 43, both inclusive, to contain a true, correct and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 47 654, on the docket of the said board, wherein Inocencio Romero *et als.* are the claimants against the United States for the place known by the name of five leagues of land in Contra Costa county.

In testimony whereof, I have hereunto set my hand and affix my
 [SEAL.] private seal, (not having a seal of office,) at San Francisco,
 California, this fifteenth day of October, A. D. 1855, and
 of the independence of the United States the eightieth.

GEO. FISHER, *Sec'y.*

Endorsed : Filed October 23, 1855.

J. A. MONROE, *Clerk.*

Notice of appeal.

THE UNITED STATES }
 v. } On appeal from the U. S. land commission.
 INOCENCIO ROMERO & } Case No. 654.

Please take notice that the claimants in the above case will prosecute an appeal therein.

CROCKETT & PAGE,
Of counsel for claimants.

To J. A. MONROE, *Clerk.*

Endorsed : Filed Jan'y 10, 1856.

JOHN A. MONROE, *Clerk,*
 By W. H. CHEVERS, *Deputy.*

Notice of appeal.

In the district court of the United States, northern district of California.

INOCENCIO ROMERO *et al.* }
 vs. } No. 304 of transcript.
 THE UNITED STATES. }

You will please take notice that the claimants in this case intend
 to prosecute an appeal to this court from the decision of the
 50 board of United States land commissioners, rejecting their claim.

Yours, &c.,

CROCKETT AND PAGE,
Atty's for Appellants.

To SAM'L W. INGE, Esq., *U. S. Dist. Court,*
 And Jno. A. MONROE, Esq., *Clerk of said court.*

Endorsed : Service accepted March 12th, 1856.

A. GLASSELL,
Ass't U. S. Dist. Att'y.

Filed March 12th, 1856.

JOHN A. MONROE, *Clerk,*
 By W. H. CHEVERS, *Deputy.*

Petition.

In the district court of the United States, northern district of California.

INOCENCIO ROMERO, FRANCISCO ALTOYO, ALVIN C. CAMPBELL, JAMES W. THOMPSON, WILLIAM H. MITCHELL, JOHN M. JONES, C. YEAGER, MIGUEL GARCIA, and JOSÉ ROMERO,
vs.
THE UNITED STATES.

To the honorable Ogden Hoffman, jr., judge of the district court of the United States for the northern district of California:

Your petitioners, above named, respectfully show that heretofore, viz: on the twenty-eighth day of February, A. D. 1853, they filed before the United States board of land commissioners for the State of California, a petition for the confirmation of their claim to a tract of land situate in the northern district of California, and in the county of Contra Costa, for a description of which land, and the title thereto, reference is hereby made to said petition; that after hearing said petition, with the proofs and argument of counsel in the cause, the said board, on the seventeenth day of April, A. D. 1855, rejected said claim as invalid.

That on the twenty-third day of October, A. D. 1855, a transcript of the record was filed in this court, by virtue whereof, and by force of the statute in that case made and provided, an appeal to this court was duly effected; that on the 12th day of March, A. D. 1856, your petitioners filed in this court a notice of their intention to prosecute said appeal. Your petitioners therefore pray that the decision of said board be reversed, and that this court confirm their title to said land, to which confirmation your petitioners allege they are justly and lawfully entitled.

CROCKETT AND PAGE,
Attorneys for petitioners.

Endorsed: Filed March 12th, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

52 *Dep. of Inocencio Romero.*

United States district court, northern district of California.

SAN FRANCISCO, *Feb'y 11th*, 1857.

On this day, before John A. Monroe, commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Innocencio Romero, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows,

his evidence being interpreted by Clinton Palmer, a sworn interpreter.

Present: E. A. Lawrence, counsel for the claimants, and Wm. Blanding, esq., U. S. dist. att'y.

Questions by claimant.

What is your name, age, and occupation, and place of residence?

Answer. My name is Innocencio Romero; age, 52 years, and residence, the Rancho de la Purissima.

2nd. Are you acquainted with the Romero rancho, in Contra Costa county; and if so, to whom was the same granted, and by what governor?

53 Answer. I am. It was granted to me and my brothers by Governor Micheltorena.

2nd. What were the boundaries of the land granted?

Answer. At the south by the rancho of Castro and Pacheco, on the north by the Welsh rancho, and on the west by the rancho Morraga, and on the east by the rancho of Juana Pacheco. The land granted was a sobrante of those ranchos. I asked for all the sobrantes, but, though their lands did not extended to the arroyos, I only took the land included by the arroyos.

3rd. Who had charge of the title papers of the rancho?

Answer. An American by the name of Tingly or Hinckley—I don't know which. I gave them to a native by the name of Francisco Garcia to give them to the American I alluded to. The native was a partner, at the time, of mine, my brother having sold to him. I was sick at the time.

4th. Why did you give them?

Answer. I gave them to the American, who was a lawyer, for the purpose of having them submitted to the land commission.

54 5th. What became of the Hinckley, and have you ever seen the title papers since?

Answer. The man left the country, and I have never seen the title papers since, and I don't know where the papers are.

6th. Did you ever live on the rancho; and if so, how long?

Answer. I did live there ten or eleven years. I had four houses on it, and a portion of the land was cultivated, and I had horses, cows, and oxen on the place.

Cross-examined.

Witness, sworn on his *voire dire*, says:

Have you any interest in this land; and if not, to whom have you conveyed it?

Answer. I have no interest in it; I sold my interest three years ago to Domingo Pujol; I gave him a bill of sale or deed; it was recorded at Martinez.

Question. Describe the papers you gave to Garcia for Hinckley.

Answer. They were the original title papers given to me by the governor, and the grant of the governor was among them, and

55 I am certain of that fact. I have heard Garcia is in Guaymas; he has left California.

Question. Has Garcia any claim in this land?

Answer. He has not; he has sold out. José Romero sold to Garcia all his right and title, some time about eight or nine years ago; I don't recollect the time.

Question. Was the land ever measured and possession given?

Answer. The alcalde wrote to Brown to measure the land, and Brown measured and marked the boundaries, and I was in possession; the only boundaries measured was the southern boundary. The grant was made a short time after Micheltorena arrived and acted as governor, some 14 or 15 years since.

Question. Had you charge of the papers before you gave them to Garcia?

Answer. I did—I and my brother.

Question. From whom did you and your brother get the grant?

Answer. The secretary of Micheltorena delivered them to me in person. Arce was the secretary's name. I received the papers in Monterey in the presence of the governor. I have received all the money due me, and have no mortgage on the land.

56 IGNOCENCIO ROMERO.

Sworn and subscribed to before me this 11th of Feb'y, 1857.

JNO. A. MONROE,

U. S. Comm'r.

Endorsed: Filed Feb'y 11th, 1857.

JOHN A. MONROE, *Clerk,*

By W. H. CHEVERS, *Deputy.*

Answer.

In the district court of the United States for the northern district of California.

THE UNITED STATES }
ads. } D. C. 304. L. C. 654.
 INOC. ROMERO *et al.* }

The United States, by their attorney, deny the validity of the title set out in the petition of the appellants, and pray that the decision of the U. S. land commission be affirmed, and that the said title be decreed invalid.

WM. BLANDING,

U. S. Att'y.

SAN FRANCISCO, *Feb'y* 12, 1857.

Endorsed: Filed Feb'y 12th, 1857.

JOHN A. MONROE, *Clerk,*

By W. H. CHEVERS, *Deputy.*

United States district court, northern district of California.

SAN FRANCISCO, *Feb'y 18th*, 1857.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came G. B. Tingley, a witness produced on behalf of the claimant in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 164 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: Counsel for claimant and Wm. Blanding, U. S. dist. attorney.

Questions by counsel for claimant.

What is your name, age, occupation, and place of residence?

Answer. My name is G. B. Tingley; aged 42 years; reside in San Francisco, and am an attorney-at-law.

Question. Do you know anything of the title papers of the Romero rancho, claimed by Inocencio Romero and others? and if so, please state your knowledge thereof.

Answer. I do. In 1850 there was a suit pending in the pueblo of San José, between Domingo Peralta Peff and Inocencio Romero
58 and Francisco Garcia, defendants, in the dist. court of said county, and on the trial of said suit there was exhibited and read as evidence on the part of defendants a grant in the Spanish language from Manuel Micheltorena to the three brothers Romero, (of whom Garcia afterwards purchased the interest of one,) for a tract of land, a sobrante, lying between Welsh, Lorenzo Pacheco, Peralta, and Joaquin Moraga, and Juan Sotos, ranchos. The petition was for the sobrante included therein, and the grant was for the sobrante, five leagues, more or less. The grant produced was on Spanish paper, and signed by Micheltorena on both sides, and was signed by Micheltorena as governor of California at that time; that the signature of Micheltorena was genuine as I believe from having seen his signature many times. The last I saw of the title papers they were in possession of a lawyer at San José by the name of Fred. H. Sanford. From my knowledge of the character and mode of business of Sanford, I think he was partly deranged, and no paper was safe in his hands—he went home to Georgia and died—nor was any paper safe in his hands. He took my license to practice law, and swore he
59 had never seen it. I have never seen or heard of said grant since. I know I have not the papers, and I am certain Sanford had them at the conclusion of the trial.

The reason why Inocencio Romero testified to my having the papers was because I and said Sanford sent a native California, and I think negro, Garcia, to Romero to get the title papers, and one of the witnesses on the trial swore that one of the parties was sick at the time; I think it was Inocencio Romero. Sanford left the winter or spring following and never returned. I had repeated occasions to search for his business papers, and have never been able to find them.

Cross-examined.

State what papers were produced on the trial.

Answer. The petition for the sobrante, signed by the brothers Romero. Connected with the petition was a marginal endorsement signed by Micheltorena, "Let the information be given." There was an information, signed by Antonio Maria Pico; then followed the concession; then was their title in form with a seal; at the bottom of the title was a condition that the grant should not interfere with the adjoining grants or the valid rights of adjoining proprietors. I don't recollect any papers relating to juridicial possession. I am
60 confident that Sanford took the papers at the conclusion of the trial. The handwriting of Micheltorena was proved, I think, but am not certain; but I am certain they were admitted in evidence. I do not remember the date of the title paper.

GEO. B. TINGLEY.

Sworn to before me this 18th day Feb'y, 1857.

JNO. A. MONROE,
U. S. Commissioner.

Endorsed: Filed Febr'y 18, 1857.

W. H. CHEVERS, *Deputy.*

Dep. of José Romero, and stipulation to admit same.

District court of the United States for the northern district of California.

JOSÉ ROMERO *et al.* }
vs.
THE UNITED STATES. }

NORTHERN DISTRICT OF CALIFORNIA, *San Francisco, ss:*

José Romero, being sworn, says that he is one of the claimants above named; that he and his two brothers, Innocentio and Mariano Romero, petitioned for the land known as "Las Juntas;" that
61 his brother, Innocentio Romero, moved upon the land in the year 1843, at the time of petitioning for the same, and that said Innocentio attended to all the proceedings for obtaining a grant of the same, and had the custody of all the papers connected with the title thereof; that this deponent and his brother Mariano did not live upon said ranch, and did not have any custody of the title papers therein; that his brother Mariano now lives in Monterey, in this State; that he has none of the title papers in said cause, and does not know where they are, unless in the possession of his brother Innocencio; that said ranch has been known as the Romero ranch since the same was petitioned for in 1843; that their title to the same never was disputed, except by squatters; that this deponent sold a portion of his interest in said ranch to one Garcia, before the Americans arrived in this country, but that the deed therefor was not made until the year 1846-'47 or 1848; and further says not.

[SEAL.]

his
JOSÉ + ROMERO.
mark.

Sworn to and subscribed before me this 13th day of December, A. D. 1856.

OREIN BAILEY,
Notary Public.

62 I hereby stipulate that the within affidavit may be used the same as if taken before a commissioner by this court.

WM. BLANDING, *Dist. Att'y.*

FEB'y 21st, 1857.

Endorsed: Filed Febr'y 21st, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Dep. of C. Brown.

UNITED STATES DISTRICT COURT,
Northern District of California:

THE UNITED STATES
vs.
INOCENCIO ROMERO *et al.* }

SAN FRANCISCO, *February 21, 1857.*

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Charles Brown and James M. Tice, witnesses produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 654 on the docket of the said board of commissioners, and was duly sworn,

63 and testified as follows, their evidence being given in English:

Present: E. A. Lawrence, for claimant; Blanding, dist. att'y, for U. S.

Questions by claimant's att'y.

What is your name, place of residence, and age?

Ans. Charles Brown; I reside at the Mission Dolores; my age is 42 years.

Quest. Are you acquainted with the Romero rancho. How long have you known it? and state what you know in regard of it.

Ans. I am, and have known it 17 or 18 years. It has always been known and recognized by the neighbors as the Romero ranch; I have never heard of any one disputing the title of the Romeros thereto; never saw the grant, but always understood that there was a grant to them of the rancho. One of the Romeros is a brother-in-law of mine, and on that account I was well acquainted with their business. I lived in San Antonio, about half-way from the town of San Antonio to the Romero ranch, during the years of 1838 and 1839, and was very frequently over the rancho from that time until the Americans came to this country.

Cross-examined.

64 Ans. The Romeros would have not been there till that time if they had not had a grant. The Romeros were living there before 1840, and had their cattle and a corral, and had a house there.
CHARLES BROWN.

Dep. of J. M. Tice.

Mr. James M. Tice, being duly sworn for the claimants, deposes and says :

Quest. What is your name, age, and place of residence ?

Ans. My name is James M. Tice ; age, 51 years ; reside in Contra Costa co., on the ranch in question.

2nd quest. State what you know in regard of the title papers in said ranch.

Ans. When my son purchased the ranch, in February, 1855, the case had been submitted to the land commission and subsequently rejected for want of the title papers ; since that time I have been engaged in looking after the title papers and hunting up testimony in said case. I have done it in behalf of my son and the other parties interested in said ranch. I have made diligent search for the papers, and been unable to find them ; from the information

65 which I have been enable to obtain, said papers were last in the hands of Mr. Sanford, who was the attorney for Romero and Garcia in a suit at San José, brought by Doningo Peralta against them ; that said Sanford had the title papers at the conclusion of the trial, and refused to give them up on account of his fees not being paid by Romero.

I am satisfied from my examinations that Sanford took the title papers of said ranch to the Atlantic States, and since has died, and believe said papers to be lost.

Cross-examined by U. S. dist. attorney.

I never have examined the house that Romero now lives in ; but Romero told me the same thing as he testified to in his deposition in this case.

J. M. TICE.

Sworn to before me this 21st day of Feb'y, A. D. 1857.

JNO. A. MONROE,

U. S. Comm'r.

Endorsed : Filed Feb'y 21st, 1857.

JOHN A. MONROE, *Clerk,*

By W. H. CHEVERS, *Deputy.*

United States district court, northern district of California.

JOSÉ ROMERO *et als.* }
vs. }
 UNITED STATES. }

SAN FRANCISCO, *March 14th*, 1857.

On this day, before Jno. A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Jesus Policarpio Mesa, a witness produced on behalf of the claimant in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Edgar Grymes, a sworn interpreter.

Present: U. S. dist. att'y, and E. A. Lawrence, for claimants.

Questions by counsel for claimants.

1st quest. What is your name, age, and occupation?

Answer. My name is José Jesus Policarpio Mesa; aged 57 years; and reside at the Rancho de las Juntas. I know Romero's
 67 rancho. On the return of Romero from Monterey, in the year 1844, Romero was taken sick in bed at the pueblo of San José, at my house, and I saw the title papers of Romero in his hands. I asked him what the papers were, and he told me they were the title papers of his rancho. I did not read the papers; and I saw afterwards the order of the commandante, Micheltorena, to survey the land. I saw the signature of Micheltorena in the original title papers. I knew Micheltorena, and have seen him write, and the signature was genuine. The land was a sobrante between the lands of Bartolomo Pacheco, Juan Sanchez Pacheco, Welsh, and Moraga. I know this from the fact that I saw the order of survey. I know the boundary lines between the ranchos of Pachecos and Romero by a cross, but I was not present when it was made. Between the lines of Bartolomo Pacheco and Romero there is a cross on the tree.

Cross-examined.

I have been a witness before in this case. In 1845 I first knew of Romero having possession of the rancho with his family there, and a small house. Innocencio Romero was the one who came to see me when I was sick in San José; I can't tell the time, but I recollect the
 68 year. I resided then in San José. Romero told me at the time the papers were title papers; they were served up in a bundle, and there were many of them. The bundle was not opened. Romero asked me to take charge of the papers, and I put them in my trunk. Romero was sick, and remained until he recovered, and then I gave him back the papers. The original papers were exhibited at the time of the sale from Romero to Garcia. Francisco Atoya was

reading the title at the time when I saw it. Atoya did not read the papers aloud. I did not hear the title read, and did not read it myself, but I know they were the title papers from what others said. I can't remember when this was, neither the month nor the year. I saw the signature of Micheltorena while Atoya was reading the title paper. Atoya, while he was reading, I saw the signature of Micheltorena. I saw the paper was all written on, but I read none of the papers, because I don't know how to read, but I know the signature of Micheltorena from seeing it on my own title papers. I can't write. I saw the stamp on the paper, and printing and writing; it was regular stamped paper. I was from a yard to a yard and a half from

69 Atoya when he read the paper. Atoya was reading the paper, because he had bought a part of the land before that time. I saw the order of survey in 1844, I think. The survey of the sobrante was not made, but the survey of two adjoining ranchos was made. I saw the order of survey in the pueblo of San José. Antonio Maria Pico showed it to me and to Bartolomo Pacheco. Micheltorena signed the order of survey; I saw the signature. I have only testified in three cases.

Direct resumed.

I know grants when I see them, and I think this was in the usual form.

JOSÉ JESUS POLICARPIO ^{his} + MESA.
_{mark.}

Sworn to and subscribed, March 14, 1857, before me.

JNO. A. MONROE,
U. S. Com'r.

Endorsed: Filed March 14th, 1857.

JNO. A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Dep. of José R. Mesa.

United States district court, northern district of California.

SAN FRANCISCO, *March 17, 1857.*

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Ramon Mesa, a witness
70 produced on behalf of the United States in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654, on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Robert Simson, a sworn interpreter. Present: The U. S. dist. att'y, and E. A. Lawrence, esq., of counsel for the complainants.

Questions by counsel for the United States.

1st. What is your name, age, and occupation?

Answer. My name is José Ramon Mesa; I am a ranchero, and

live in Marin county, and am thirty-three years of age. I have lived in California ever since I was born. I know Domingo Peralta, Innocencio Romero, and Francisco Garcia.

Quest. Do you remember a suit between Domingo Peralta on the one hand, and Innocencio Romero and Francisco Garcia on the other, in the district court of San José, in 1850?

(Question objected to by claimants' attorney as being secondary evidence.)

71 Ans. I remember the said suit. I was present at the trial.

Quest. State if you remember what was the subject-matter of that suit.

(Question objected to by claimants' attorney as incompetent testimony, no foundation having been laid for the introduction of secondary evidence.)

Ans. It was about a piece of land which forms part of the rancho of San Ramon. There was no formal title presented in evidence by the Romeros in that cause. There was a provisional document. I mean by a provisional document, a document conceding to the parties a provisional license to occupy, subject to the boundaries of the neighboring proprietors; meanwhile, that the proceedings took place for the getting of the title.

Quest. Did you, on the trial, read or heard read the document you have mentioned, and in what language were the document made?

(Objected to by claimants' attorney. Objects to the witness stating anything that *that* he heard read.)

Ans. I heard the document read in the Spanish language in court.

Yes, I have heard Innocencio Romero speak of the said piece
72 of land since the Americans took possession of California. He spoke in reference to his ranch or title. I heard Domingo Peralta, on one occasion, ask Innocencio Romero what title he had from the government for that piece of land. Romero said that he had no title from the Mexican government for that piece of land; that all he had was a provisional license. This conversation between Romero and Peralta took place after the suit in San José. I heard Innocencio Romero say that he wanted to sell that provisional land that he had, in order to be liberated from suits, so that another person might litigate about the land instead of him. This was before the sale of Innocencio Romero. I am in no way related either to Mr. Romero or Francisco Garcia. I have heard Garcia say that he had no title to the land in question. I heard Garcia at the same time say that he intended to take steps to get a title for that land. On several occasions I heard Garcia say that he had only a provisional license ("licencia provicional") for the said land, and that he was anxious to proceed with the steps necessary to obtain a title. His conversation took place after José Romero had sold his right in said land to Francisco Garcia, and it was before that Francisco Garcia had sold

73 to anybody else. (This examination was taken under objection of claimants.)

Cross-examination by claimants' attorney.

I do not remember when Garcia bought, but I remember when he sold. I cannot undertake to fix exactly the date when Garcia sold, but I think it was in 1852 or 1853. As it was not a matter that concerned me, I cannot fix the date exactly. These conversations took place three or four months before the sale by Garcia. There were squatters on said ranch about this time, and there were difficulties with them. I do not know how to read or write. When I had the conversation that I have mentioned with Francisco Garcia he and I were alone together. That one of the conversations to which I refer took place in my presence between Garcia and Romero, and the conversations to which I refer are those about which I have already testified.

I mean by a final grant, one which runs in the name of the government, for instance, of General Micheltorena. I do not recollect in the name of what governor this "*licencia provisional*" ran, but I think that it was in favor of Innocencio Romero. I am ignorant in regard of matters of law; all that I know about this document is what I
74 heard read in court. I mean as to the form of the document.

I have not read a final document of title, but I have heard them read. I know, of my own knowledge, what a formal title is; it is a concession from a president or superior officer, signed and issued by him to any body whatsoever named in the concession. The reason I know this is, that with the amount of talent that God has given me I have been enabled to know it. I have learned this from having heard instructed persons read it and by my natural ability. I have adopted it. The lawsuit in San José, of which I have testified, between Peralta, Romero and Garcia, took place in the year 1850. I was not in court all the time of the trial at San José, but I was some of the time. I cannot tell how long a time the proceeding in court lasted. I only know of one day's proceeding in the court of San José. Domingo Peralta gained the said suit in San José. I do not know whether the case was appealed to the Supreme Court.

JOSÉ RAMON X MESA.
his
mark.

Sworn to before me this 17th of March, 1857.

JNO. A. MONROE,
U. S. Com'r.

Endorsed: Filed March 17, 1857.

JNO. A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Opinion and judgment of the supreme court of California.

75 DOMINGO PERALTA, respondent,
vs.
INOCENCIO ROMERO and FRANCISCO GARCIA, appellants. }

And now, at this day, this cause having been submitted upon the record and briefs, and taken under advisement by the court, being called, and all and singular the law and the premises being by the

[REC. CXXXX, D. T. 1862.]—3

court here seen, heard, and fully understood and considered, the opinion of the court is delivered by Mr. Justice Bennett to the effect that the judgment of the court below be reversed. Whereupon it is ordered, adjudged, and decreed by the court here that the judgment of the district court of the third judicial district, in and for the county of Santa Clara, in the above entitled cause, be, and the same hereby is, reversed, in conformity with the opinion of this court herewith remitted.

I, Charles S. Fairfax, clerk of the supreme court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 25th day of July, A. D. 1851, and now remaining of record in my
76 office.

Witness my hand and the seal of the court affixed, at office,
[SEAL.] this 16th day of March, A. D. 1857.

CHAS. S. FAIRFAX, *Clerk.*

By DAV. T. DAYLEY, *D. Cl'k.*

Opinion of the court by Mr. Justice Bennett.

DOMINGO PERALTA,

vs.

INNOCENCIO ROMERO and FRANCISCO GARCIA. }

This action was brought to recover the possession of a tract of land in the valley of San José. It was instituted in the court of first instance for the district of San José previous to the adoption of the common law, and the proceeding is one which is denominated in the civil law a *possessory action*. Such an action does not involve an inquiry into the validity of the title of either party, nor does it require the court to determine whether the title of the plaintiff be such as would enable him to recover in an action of ejectment at common law. The proof shows that the defendants had been in the undisturbed
77 possession of the land in dispute for more than a year and a day previous to the institution of the suit, and the Spanish and Mexican authorities are explicit that a possessory action cannot be maintained in such a case.—(See *Suñol vs. Hepburn*, and authorities there cited.)

The court was asked to instruct the jury to that effect, but refused, and the defendants excepted. For this incorrect decision the judgment must be reversed. There are many other reasons why I do not feel disposed to pass definitely upon the rights of the parties. The land claimed is a large tract, and of great value. There is no answer to the complaint upon the merits; but an answer was put in by way of exception, being in the nature of a common law demurrer, and upon the complaint and this demurrer the parties went to trial, adduced evidence, and submitted their cause to a jury.

The evidence returned is so meagre and insufficient that it is impossible for me to say which party has the title to the land in controversy, or whether the land now in the possession of the defendants is the same tract which is claimed by the plaintiff, or is that which was

granted by Governor Figueroa to Pacheco and Castro. In addition to this, the court has not had the benefit of an argument at bar, the cause having been submitted on the record ; and the points of the defendants and the counsel for the plaintiff having failed to furnish the court with any points or briefs, I do not feel disposed, in this way, to decide finally upon the important interests of parties. The land described in the complaint appears to have been granted by Governor Figueroa to Bartolo Pacheco and Mariano Castro. The latter conveyed his interest to the plaintiff Peralta. Pacheco died without having parted with his interest, and consequently the plaintiff and the heirs of Pacheco have a joint interest in the whole property. No reason is given in the complaint why the heirs of Pacheco are not joined as co-plaintiffs, and the objection, on the ground of non-joinder, was taken in the court below. I do not see how the plaintiff can recover without joining the persons who have with himself a common interest in the land. The plaintiff alone does not appear, from his own showing, to be entitled to the possession ; but if he has any claim at all, it is a joint claim with the heirs or assigns of Pacheco. I think the best course to be pursued is, to reverse the judgment without prejudice to the right of the parties in the subject-matter of controversy, and leave them to present their cause of action and their defence in a legal and definite shape under the present system of procedure.

Ordered accordingly.

(Signed)

BENNETT, J.

79 I, Charles S. Fairfax, clerk of the supreme court of the State of California, do hereby certify that the foregoing is a true copy of the original opinion, delivered in the above entitled cause on the 25th day of July, A. D. 1851, and now remaining of record in my office.

[SEAL.] Witness my hand and seal of the court, affixed at office, this 16th day of March, A. D. 1857.

CHAS. S. FAIRFAX, *Clerk*,
By DAV. T. DAGLEY.

Endorsed : Filed March 23, 1857.

W. H. CHEVERS, *Deputy*.

81 STATE OF CALIFORNIA,
County of Santa Clara :

Be it remembered that at the district court of Santa Clara county, begun and held before the Hon. John H. Watson, judge, in the city of San José, on the 4th Monday in April, A. D. 1850, among other causes then and there heard was the following, to wit :

Transcript from Sup. Ct. of Cal'a, offered by the U. S.

DOMINGO PERALTA	}	Possession and damages.
vs.		
INNOCENCIA ROMERO AND FRANCISCO GARCIA.		

UPPER CALIFORNIA,
District of San José:

To the honorable court of the first instance for said district .

The petition of Domingo Peralta, complaining, respectfully sheweth that José Figueroa, brigade general of the Mexican army, inspector general and superior political chief of the Territory of California, did, on the tenth day of June, in the year of our Lord eighteen hundred and thirty-three, give, grant, and convey to one Bartolo Pacheco and Mariano Castro a certain quantity, tract, or parcel of land, now in said district of San José, bounded on the north by a tract of land called El Ambré, on the south by the rancho of José Maria Amador, to the east by the rancho of San Antonio, on the west by a
82 tract of land called Monte del Diablo, containing two leagues, more or less, and unknown, the grant to which premises made by the said José Figueroa, and the plat of said land, are here in court, ready to be shown ; and the said Mariano Castro afterwards, to wit, in the month of July, 1843, did sell all of his interest, the same being one-half, to the Peralta, your petitioner, who immediately went into the possession and occupancy of the same ; and your petitioner avers that while he, the said Peralto, and the said Pacheco, who is now dead, were in the actual, lawful, and quiet possession of the said premises as before described ; that one Innocencia Romero and Francisco Garcia, of said district, did, in January, eighteen hundred and forty-four, without any authority, color of title, or claim whatsoever, enter and trespass upon the land aforesaid, contrary to law and the known and repeated notice of your petitioner, and that said Innocencio Romero and Francisco Garcia are now in the unlawful possession of said land ; and your petitioner avers that said land is of great value, to wit : of the value of fifteen thousand dollars, and that by the entering upon and using of the said land by the said Romero and Francisco Garcia for a long space of time your petitioner has sustained damages
83 of them in the sum of twenty thousand dollars ; wherefore your petitioner prays that process or summons may issue to said Romero and Francisco Garcia, requiring them to be and appear before the court of the first instance to answer petitioner's complaint, and to try the right of possession of said land, and to stand to and abide by such decree as may be had on trial of the right of the possession of said premises, as well as to answer your petitioner for the damages he has sustained by the illegal possession of said defendants ; and your petitioner will ever pray, &c.

FRED. H. SANFORD,
Compl'ts' Attorney.

STATE OF CALIFORNIA,
District of San José:

The people of the State of California to Innocencia Romero and Francisco Garcia :

You are hereby cited to be and appear at the court-house in the Pueblo of San José within nine days after service of this writ, to answer the petition of Domingo Peralta for the right of possession of lands and damages in the sum of twenty thousand dollars. Given under my hand this 8th day of March, 1850.

H. C. MELONE,
Clerk of Court of First Instance.

84 Served by reading to Francisco Garcia, and by copy on Innocencia Romero, March 9th, 1850.

J. F. SROWE,
Sheriff.

DOMINGO PERALTA	} Exception 16.—March,
<i>vs.</i>	
INNOCENCIA ROMERO AND FRANCISCO GARCIA.	1850.

Now at this day comes the aforesaid parties by their respective attorneys; defendants filed exceptions to plaintiff's petition, which, by agreement of the parties, were taken up and the court sustained them; thereupon plaintiff was allowed to amend his petition.

UPPER CALIFORNIA,
District of San José:

In the honorable court of the first instance for said district :

DOMINGO PERALTA	} Petition for possession of
<i>vs.</i>	
INNOCENCIO ROMERO AND FRANCISCO GARCIA.	land and damages, &c.

Now comes said respondents, and for answer (by way of exception) to plaintiff's petition, herein say the same is not sufficient in
85 law to enable petitioner to maintain his petition in this, to wit :
said petitioner shows that the land described in his petition was granted to Bartolo Pacheco and Mariano Castro, as joint tenants, in the year 1853 ; that in July, 1843, said petitioner purchased one-half of said tract of land, being Mariano Castro's interest therein, and immediately entered into the possession of the same, (one-half,) as tenant, in common with Bartolo Pacheco. Petitioner then avers that while himself and Pacheco, who is now dead, were in the actual, lawful, and quiet possession of the premises described, said defendants, without color of title or right to said land, entered thereon as trespassers, &c.

Petitioner then claims possession of *all* the land and damages for trespass and detention of all said trac.

But petitioner does not show that any partition of said land was ever had between himself and Pacheco, or any one holding under Pacheco, by

descent or purchase, or that petitioner has anyright, title, or claim to Pacheco's interest in said land, nor does petitioner allege or show any claim or right whatsoever, by deed, grant, or descent, to the whole of said tract of land ; nor does he show when he was in quiet possession, or when defendants entered thereon ; nor does he show that defendant entered or trespassed on any definite share or part of said tract of land, by metes or bounds, to which he has any right or title,
 86 but admits that the amount and limits of said land are unknown ; nor does he allege or show that Pacheco has no heirs or legal representatives now living or in possession of Pacheco's interests in said land ; nor does he show the date of defendants' entry on said land, or how long they have been possessed thereof ; and they further aver that said petition is otherwise vague, uncertain, and wholly insufficient in law to afford petitioner any redress ; wherefore, for the reasons aforesaid, defendants except to the sufficiency of plaintiff's petition, and pray the judgment of this hon. court whether they shall be required to further answer the same, and pray to be hence discharged with their costs.

GEO. B. TINGLEY.

Att'y for Def'ts.

DOMINGO PERALTA	}	Complaint in court of first instance.
<i>vs.</i>		
INOCENCIA ROMERO &		
FRANCISCO GARCIA.		

It is agreed that said cause be set down for trial on Thursday next, the 20th inst., and that all exceptions not taken or waived to the declaration before trial shall not be taken on the appeal.

TINGLEY,

Att'y for Defendants.

87

FRED. H. SANFORD,

Plaintiff's Att'y.

DOMINGO PERALTA	}	Possession and damages, May 13, 1850.
<i>vs.</i>		
INOCENCIA ROMERO &		
FRANCISCO GARCIA.		

In this cause comes the parties, by their attorneys, and issue being joined, thereupon a jury was summoned from the bystanders, to wit: Edward Jones, Samuel C. Young, Henry S. Trigler, David Barnes, William S. King, John Tigh, Zeri Hamilton, H. S. Skinner, S. O. Haughton, John H. Garrison, Wm. H. Christian, and Michael Marshall, who were duly sworn to try the issue joined. Edward Jones, being sick, was excused by agreement of the parties. The evidence not being closed, the jury were permitted to disperse, under charge of the court, until to-morrow at 10 o'clock.

DOMINGO PERALTA }
vs.
 INNOCENCIO ROMERO & FRANCISCO GARCIA. } Possession and damages, May 14, 1850.

In this cause comes the parties, by their attorneys, and the afore-said jury, to wit: Samuel C. Young, Henry S. Trigler, David Barnes, William S. King, John Tigh, Zeri Hamilton, H. C. Skinner, S. O. Haughton, John H. Garrison, Wm. H. Christian, and Michael Marshall, and the following persons were sworn in behalf of plaintiff, to wit: Mariano Castro, John Soto, C. Hernandez, — Garcia and Juan Espacia; and the following for defendants, to wit: Charles White, Antonio Ma. Pico and K. R. Dimmick; the evidence being closed, the jury, upon their oath, returned into court the following verdict, to wit:

The jury find a verdict for plaintiff in regard to the right of possession, and find damages for plaintiff in the amount of sixty dollars and costs.

DAVID BARNES,
Foreman.

Wherefore, it is considered, adjudged, and decreed by the court that the plaintiff do recover the property described in his petition, and that a writ of *habere facias possessionem* be issued, commanding the sheriff to put him in possession of the said premises; and it is considered, adjudged, and decreed by the court that the said plaintiff do recover of the defendants the damages assessed, to wit: the sum of sixty dollars and all costs in said cause expended, which said verdict was rendered at San José, in the county of Santa Clara, on this 14th day of May, A. D. 1850.

89 DOMINGO PERALTA }
vs.
 INNOCENCIA ROMERO & FRANCISCO GARCIA. } May 13th, 1850.

Mariano Castro, sworn on the part of plaintiff, says he has no interest in the event of this suit. Knows the land in dispute. The act accompanying plat presented to witness the defendants' counsel objects. This is a copy of the original plat in Monterey. Defendants' counsel excepts to the introduction of the plat—overruled the objection. The court permitted the plat to go to the jury. He (witness) turned over the possession of the place some five or six years ago to the plaintiff. Domingo Peralta took possession about four years ago, say in 1846. No person lived on the land in dispute in 1846, when Peralta took possession. Defendants are now living upon the land in dispute, and entered on after plaintiff. Defendant did not remain on premises with consent of plaintiff, and they have often endeavored to get them off. Defendants instituted suit against plaintiff in Contra Costa county, before the alcalde, about two years ago, and plaintiff instituted suit against defendants for same, about same time, before same alcalde. That there has been difficulties and suits about possession continually since defendants levied on the land. That

90 he sold to plaintiff; values the land at \$10,000 ; would not take, per year, \$200 if he was owner.

Crossed.

Witness states that def'ts have lived more than two years on the land now in dispute. He went with Peralto to the alcalde, and asked, why do you allow the def'ts to stay on the land, which he, witness sold to Peralta. Domingo Peralta had a small house and commenced to build a large house. He was dispossessed by an order from Alcalde Brown, from Contra Costa. Peralta being first on the ground, difficulties arose on entrance of defendants, and have continued to the present time. Suit was brought before Burton, alcalde, about three years since, at the time witness went before Alcalde Brown, of Contra Costa; that he had no interest in the land; was not responsible if lost, nor would he gain if it was gained.

Juan Soto sworn: Witness states that he knows the land in dispute; does not remember the time or year. Domingo Peralta was first in possession of the land in dispute. Def'ts after took possession, and dispossessed by order of Alcalde Brown. Defendants have been in possession two years, more or less. Peralto lived with his family on the land in dispute, and tilled the earth.

Cornelius Hernandez sworn.

91 Garcia (brother of the def't) sworn: Knows the land in dispute. Domingo Peralta went on the land in the year 1847. Peralto was first on the land in dispute. Defendants went on the land in dispute. Defendants went on the land four or five months after plaintiff; that plaintiff has attempted legally and otherwise to oust the defendants from the time of their entrance to the present time. Thinks the rent of the land worth \$200.

Crossed.

Says defendants have been in possession; had their cattle, and cultivated the ground.

Juan Espacia sworn: Says he had no interest in the event of this suit. Knows the land in dispute. The use of land is worth about \$2,000 per year.

Crossed.

Has seen the land in dispute.

Charles White sworn: Says he has no interest in the event of this suit. Is acquainted with the handwriting of Burton. Burton was alcalde in 1847. He acted as recorder and secretary for Burton, and, as such, recorded all acts required. Burton exercised the jurisdiction of first alcalde since 1846. Peralto sued. Defendants were in possession of land, and he has therefore been continually trying to get them off.

92 Antonio M. Pico sworn: Says he has no interest in this suit.

Witness knows the land in dispute. Witness states that the governor gave him orders to give Mariana Castro possession of the

land in 1844, and the remainder of the land was to go to the Romeros. He therefore called together the parties and advised a survey, which was not agreed upon ; and he (witness) then advised the Romeros to go and take possession of a remote part of the land, so as not to conflict with Mariano Castro ; that at the time of this he was alcalde of San José. Witness believes that he was commanded to give about two leagues, more or less, to Mariano Castro. The southern line of the rancho is a little more south of the house, as laid down on the plat, marked (A.) Witness has been through the land in dispute several times. Witness states that Peralta has about the same land that Mariano Castro formerly had. States that from the cultivated ground on the south, to the cultivated ground of defendants is about 2,000 varas, or about one mile.

K. H. Diminick sworn : Says he was first alcalde in the district of San José on the 1st of March, 1849, and continued until August, 1849. He was instructed by Governor Mason to act as judge of first instance, in district of San José, during the time he was alcalde. Witness during this term ordered a survey, appointed Augustus Juan, surveyor. He thinks survey marked (C) is the one returned by said surveyor. Witness recollects the order marked (D,) as the basis of his ordering the survey. That one party contended that there was two leagues, and the other contended that there was more, which dispute led to the survey.

The above is all the testimony taken in the above case.

H. C. MELONE, *Clerk.*

MAY 13, 1850.

DOMINGO PERALTA
vs.
 INNOCENCIA ROMERO AND FRANCISCO GARCIA. }

In this cause comes the plaintiff and paid the jury one hundred and ten dollars for two days' jury fees.

DOMINGO PERALTA
vs.
 INNOCENCIA ROMERO AND FRANCISCO GARCIA. }

In this cause comes the defendants, by attorney, gave notice of appeal, and tendered his bill of exceptions, which are signed, sealed, and made a part of the records.

Defendants ask the court to give the following charges :

1st. That if the jury find, from the evidence, that defendants, or either of them, have been in possession of the land in controversy since 1844, the jury must find for the defendants.

2nd. If they find from the testimony that deft's were in the possession of the land in controversy since 1844 or 1847, and have never been dispossessed by due course of law, possessory action is barred by prescription, and they should find for the defendants.

3rd. That to maintain a possessory action the party must have actual possession of the land in controversy.

4th. That if the jury find from the evidence that defendants caused

plaintiff to be ousted from the land in 1847, and have remained in possession of the same up to this day, whether that ouster was legal or illegal, the plaintiff possessory action was barred or prescribed at the time of the commencing this suit, and the jury for find for
95 defendants.

5th. If either of defendants were in possession of said land, by going on the same in person, or by building thereon in 1844 or 1845,-'6 or 1847, it is prior possession of defendants, and the jury shall find accordingly.

Stricken out by going on in person. Stricken out '44,-'45,-'46,-'47; and I add the *the* person first building, or doing other acts of ownership, is entitled to a verdict.

6th. That the jury must find from the evidence that plaintiff is entitled to some given metes and bounds to which he is entitled to possession; and if the jury find that the testimony does not establish any right of possession by metes and bounds that clearly identify the possession sought to be recovered, the jury should find for defendants; *i. e.*, the evidence must embrace the land in dispute.

7th. That if the jury find from the evidence that defendants have been in full and undisturbed possession of the lands in controversy more than one year and one day before the commencement of this suit, the plaintiff's action is prescribed, and the jury should find for the defendants, given with the insertion "undisturbed."

96 8th. Defendants ask the court to charge the jury that if defendants have been in full possession of the lands in controversy since 1844 to 1850, or from 1847 to March 7, 1850, that plaintiff's possessory action is prescribed, tho' during that time the parties quarrelled personally about the possession, and plaintiff instituted suits to recover the possession of the property both before competent and incompetent courts, provided plaintiff failed to prosecute said suits to effect, or dismissed the same, or the same were decided against him.

PERALTA <i>vs.</i> GARCIA ROMERO.	}	Possessory action.—May, 1850.
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Now comes the defendants in open court, in presence of plaintiff, and given notice that he will appeal said case to the Supreme Court, in conformity to the provisions of the statutes of the State of California regulating appeals to the Supreme Court, and the practice of said district and Supreme Courts adopted by the legislature in 1850.

INNOCENCIA ROMERO,
FRANCISCO GARCIA,

Defendants.

97 Service acknowledged.

FRED. H. SANFORD,
Pl'ff's Attorney.

PERALTO
vs.
GARCIA & ROMERO. } Petition for possession.

Be it remembered that on this 14th day of May, 1850, the above cause having been submitted to a jury, and after all the evidence being heard on the part of plaintiff and defendants, thereupon defendants moved the court to instruct the jury as follows: (see instructions.) The 1, 2, 3, 4, and eight charges the court refused to give the jury, and gave the 5, 6, and 7 in the following form: (see instructions.) To the refusing of the court to give said charges as asked for, and giving said charges as modified, defendants objected, and except and pray that this their bill of exceptions may be signed and made a part of the record in this case, which is done.

JNO. H. WATSON.

El Exmo. Sor. Gobernador ha dispuesto que se proceda á la medicion del terreno sobrante que solicitan los Señores Romero, y que si fuere necesario medir los ranchos inmediatos que tam-
98 bien se ejecute la espresada medicion en la inteligencia que los que salgan agraciados seran los que satisfagan el corte pendiente de los gastos.

Y en cumplimiento de la superior orden le digo á V. para su conocimiento y ejecucion.

Dios y Libertad, Monterey, Marzo 23, de 1844.

Manuel Jimeno, secretario del despacho. Sor. Alcalde 1º. del Pueblo de San José.

Sea de acuerdo que en el dia 9 de Abril de 1847, ordeno á los interesados de tomar posesion de los terrenos mencionados segun el orden del gobierno, y á mas ordeno que en caso que se esponga algun colindante que se mand la medicion de sus terrenos.

(Firmado)

JOHN BURTON, *J. P.*

I do hereby certify that the above is a true copy of the original found in this office. In witness whereof, I have hereunto set my hand and seal this 9th day of April, A. D. 1847.

(Signed)

JOHN BURTON, *Magistrate.*

Paso este documento al Señor D. José Miguel Garcia y para que conste lo firmo San José, 9 de Mayo, de 1849.

(Firmado)

JO É ROMERO.

99 Dijeron que por su parte se lor podia conceder á los Sñes. Romero el sobrante del terreno que no los pertenesca.

Pueblo de San José de Guadalupe, 29 de Mayo de 1847.

(Firmado)

ANTO. MA. PICO.

Tomado ante de mi Juez de Paz.

(Firmado)

JOHN BURTON.

OFICINA DE PUEBLO DE SAN JOSÉ, 28 de Mayo de 1847.

Procedo al interesado conforme el orden del supremo gobierno; y si algunos de los colindantes hara sus baraso, que se manda la medicion de sus terrenos segun lo mandado del gobierno, y en que caso no quierren cumplir siga ll. con su trabajo.

(Firmado)

JOHN BURTON, J. P.

En la cuestion suscitada entre Domingo Peralta y los Sres. Romero y Garcia Estos no tienen mas que hacer que renunciar el beneficio de la conclusion llegar al juez de 1^a instancia y alegar que entrea las medidas *exactas* del terreno de Peralta conforme á ordenanza para que sean señalados los dos sitios que pide su titulo, en caso de unfallo en contra de los Romeros deben apelar al supremo tribunal. Si proceden á la medicion del terreno debe verificarse por un agrimensor *autorizado* y no deben de perrmitir que sea por solo el llano sino sobre
100 lomas y cañadas conforme á ordenanza.

Sor. Alcalde Constitucional:

El que suscribe esta surmisa representacion tiene el honor de recurrir á V. fundado en el derecho de peticion que á todo ciudadano le concede la ley, y asi como el Exmo. Sor. Gobernador de este departamento recomienda en sus proclamas que se atienda con justicia á todo ciudadano en sus peticiones y reclamos desde el año cuarenta y cuatro se paso una orden del gobierno anterior á este juzgado para que se hiciesen los medidas del terreno llamado las juntas que pedimos en compañía yo y mi hermano Inocencio Romero compre la situacion de los colindantes lo que hasta la presente no se ha verificado los que suplicamos á V. se sirva como primer magistrado de este juzgado se haya una informacion ó se nos de un testimonio por el alcalde que fue en el año cuarenta y cuatro de los informes que se pasaron el gobierno que se nos podrá agraciar con dichas tierras.

P. T. Suplicamos se sirva proveer con piedad á favor del que reclama V. Pueblo de San José de Guadalupe, 28 de Mayo de 1847.

(Firmado,)

JOSE ROMERO.

101 Habiendo sido llamado el Sor. Don Anto. Ma. Pico el persona que era alcalde en el año de 1844, y habiendo sido preguntado sobre la materia de los Sres. Romeros tocante á la colindantes se pudeira sentar en dicho sitio pretendido llamado los juntos el Sor. Du. Joaquin Moraga y el Sor. D. Lorenzo Pacheco.

Presentado y admitido que se pasen lo mas pronto posible á cumplir con el orden del superior gobierno para su debido cumplimiento.

Oficina del magistrado del Pueblo de San José, 5 de Abril de 1857.

(Firmado)

JOHN BURTON, J. P.

Sor. Juez de Paz del Pueblo de San José de Guadalupe :

José Romero ante V. con el mayor respeti diciendo que hace algunos años que tenga solicitado un pedazo de terreno en el cañada de San Ramon y colinda con los terrenos que pertenece al sor. Don Mariano Castro tomando el sobrante de lo que espresa el titulo del sor. Castro

(que son dos leguas) y entonces colindando con los terrenos del difunto vil por el norte.

Sor. Juez el Ex'mo Sor. Governador mando que se midiese los terrenos del Sor. Castro y que si nos dasa posesion del sobrante pero nunca se ha cumplido por no haber lugar los papeles dever estar en
102 el juzgado de ese pueblo que consta del presente orden.

Sor. juez humildernente esponga á V. que somos dos hermanos y con gran numero de familia teniendo algunos bienes del campo y sin tener un pedago de terreno para criarlos por lo cual suplicamos á V. de ver por los interesados lo mas pronto que se picede para que podemos ir a fincar, y meter nuestros bienes.

Rendidamente suplico de prover como llevo pedido que es gracia que espero de ll. sus manores subditos.

JOSÉ ROMERO,

su
+
cruz.

INOCENCIA ROMERO,

su
+
cruz.

PUEBLO DE SAN JOSÉ, 31 de Marzo de 1847.

To the honorable 1st of the Pueblo de San José, P. G.:

As expressed in your decree of the 1st of March, I proceeded to the lands referred to, and known by the name parage conocido con el nombre de San Ramon, and going over a certain tract of land in a northerly direction, after measuring ten thousand varas (two leagues) in direct line, I made with an axe a mark on a tree which stands on the edge of a stream; my esteem is that there is about two thousand varas
103 between that point and the rancho of Francisco Garcia; and that with evidence Bartolo Pacheco, or assigns, have no right but to two leagues mentioned, and even I consider as very doubtful that the title of said Pacheco covers such a tract as he pretends. It would be allowing that their two leagues granted are to be measured lengthway, one league after the other, following the valley, leaving on each side vacant lands, though the grant does not mention such a special way of measuring the two leagues. The weather and other circumstances did not allow me to make further survey; but, anyhow, my opinion is, that Pacheco, or assigns, pretensions on these lands are exaggerated and out of justice.

San José Gp., Mar. 29, 1849.

A. JONAN.

(Here follows map marked original, page 104.)

105 *Jusgado del Pueblo de San José:*

Whereas, by this order of Micheltorena, then governor of California, a survey was ordered of the rancho of the Romeros and adjoining ranchos; and whereas said survey having been made by Augustus Juan, esq., by the appointment of the alcalde, in compliance of said order, therefore be it ordered that the said survey be respected by all parties, and be the said boundaries until altered or changed by competent authority.

R. H. DIMMICK, 1st Alcalde.

Petition for possession.

PERALTO
vs.
 GARCIA & ROMERO. }

Now comes the defendants and moves the court to arrest the judgment, to set aside the verdict, and for a new trial, and grant a stay of the proceedings in this cause, for the following reasons:

1st. The verdict is contrary to law and the evidence.

2nd. The court erred in not giving the charges to the jury asked by defendants, and in giving the charges objected to by defendants.

3rd. The court erred in charging the jury that 1st alcalde's
 106 exercising the powers of judges of 1st instance had no power
 or jurisdiction over possessory actions, neither as alcaldes or
 judges of 1st instance, and that such jurisdiction, if exercised by them,
 was a usurpation of office.

4th. The verdict of the jury is not definite enough on which to render a judgment for possession to plaintiff of any given or definite tract or parcel of land.

5th. The verdict of the jury will not justify any judgment thereon whatever.

6th. There is no evidence that this court ever had jurisdiction of this cause; no written or other certificate of buenos hombres in this case was filed in the court of 1st instance before this action was commenced, or at any other time.

For the 6th reason defendants move the court to non-suit the plaintiff and dismiss this action.

TINGLEY, *for Def'ts.*

DOMINGO PERALTA.
vs.
 INNOCENCIA ROMERO and FRANCISCO GARCIA. } Arrest of judgment.—
 May, 1850.

In this cause a verdict and judgment having been rendered in favor of the plaintiff at this term of the court, the def'ts, by their
 107 attorneys, this day came and filed their motion to stay the proceedings, and arrest the judgment, and dismiss the cause, which, being argued and by the court duly considered, was overruled, to which overruling defendants except.

DOMINGO PERALTA
vs.
 INNOCENCIA ROMERO and FRANCISCO GARCIA. } Appeal —17 May, 1850.

In this cause the defendants, by their attorney, this day came into court and gave notice to the plaintiff of appeal; whereupon the court ordered that the appellants, Innocencia Romero and Francisco Garcia, execute bond to the appellee, Domingo Peralta, in the sum of one thousand dollars.

Know all men by these presents that we, Innocencia Romero, Francisco Garcia, and Antonio M. Pico, and George B. Tingley, of the county of Santa Clara and State of California, are held and firmly

bound unto Domingo Peralta in the sum of one thousand dollars, for the payment of which, well and truly to be made and done, we bind ourselves, our heirs, and assigns, firmly by these presents. Sealed with our seals, and dated this 22nd day of May, 1850.

108 The condition of the above obligation is such, whereas the above-bounden Romero and Garcia have appealed to the Supreme Court from the judgment and decision of the district court for the county of Santa Clara, at the April term, 1850, in a suit wherein said Peralto was plaintiff, and said Romero and Garcia def'ts, in which suit judgment was rendered for said Peralta for the possession of the land claimed in his petition, and sixty dollars damages and costs of suit, against said Romero and Garcia: Now, should said Romero and Garcia well and truly prosecute their said appeal to final judgment in said Supreme Court, pay all costs and damages that may be awarded or adjudged against them in said court, and obey, fulfil, and comply with all orders, decrees, and requisitions of said court that may be made in the premises, then this bond to be void, else to remain in full force.

FRANCISCO GARCIA. [SEAL.]
INACIO. ROMERO. [SEAL.]
ANTONIO M. PICO. [SEAL.]
GEO. B. TINGLEY. [SEAL.]

109 STATE OF CALIFORNIA,
County of Santa Clara:

I, H. C. Melone, clerk of the county of Santa Clara, do hereby certify that I have prepared the foregoing transcript in said cause, and that I have carefully compared the same with the original papers and records, assisted by a competent and disinterested person, and find it to be a true and perfect transcript, in words and figures, of all the papers, records, and proceedings in any manner connected with said cause, and that this transcript contains thirty-one pages.

Given under my hand and private seal (there being no seal [L. s.] of office yet provided,) at office, this 11th day of June, A. D. 1850.

H. C. MELONE, *Clerk.*

I, Charles S. Fairfax, clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true and correct copy of the original transcript of the above entitled cause, and now of record in my office.

110 [SEAL.] Witness my hand and the seal of the court, affixed at office, this 23rd day of March, A. D. 1857.

CHAS. S. FAIRFAX, *Clerk,*
By DAV. T. DAGLEY, *D. Clerk.*

Endorsed: Filed March 30, 1857.

J. A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

111 U. S. DIST. COURT,
Nor. Dist. Cal. :

THE UNITED STATES
vs.
INOCENCIO ROMERO *et als.* } No. 304.

Opinion.

It appears from the expediente on file in the archives that, on the 18th day of January, 1844, the brothers Romero petitioned the governor in the usual form for a grant of land, being a sobrante lying between the ranchos of Moraga, Pacheco, and Welsh. This petition was by a marginal order referred to the hon. sec'y for his report.

The secretary referred the papers to the 1st alcalde of San José, with directions to summon Moraga, Pacheco, and Welsh, hear their allegations, and return the papers to the office.

On the 1st February, 1844, the 1st alcalde reports that the owners of the lands bounded by the tract have been confronted with the petitioners, and that the former are willing and desirous that the land be granted.

He adds that it had come to his knowledge that one Francisco Soto claimed the tract some six or seven years ago. But as he had never used or cultivated it, the petitioners appeared to him to be entitled to the favor they ask.

112 On the 4th February, 1844, Manuel Jimeno, the sec'y, reports to the governor that, in view of the report of the 1st alcalde, there would seem to be no obstacle to making the grant.

On this report of the secretary the governor makes the following order: "Let the judge of the proper district take measurement of the unoccupied land that is claimed in presence of neighbors, and certify the result, so that it may be granted to the petitioner."—"Micheltorena."

On the 21st March, 1844, the claimants addressed a petition to the governor representing that, owing to the absence of the owners of the neighboring lands, the judge of the pueblo of San José had been unable to execute the superior order (above recited,) and soliciting that his excell'y would grant the tract to them, "either provisionally or in such a way as he should deem fit, while there was yet time for planting," &c.

On this petition Jimeno reports (March 23d, 1844,) that the original order should be carried into effect as to the measurement of the land, and that "as soon as that was accomplished Señor Romero can present himself with Señor Soto, who says he has a right to the same tract."

The governor thereupon made the following order: "Let everything be done agreeably to the foregoing report."—"Micheltorena."

The above documents constitute the whole expediente on file
113 in the archives.

From the documents produced by the claimants from the files of the alcalde's office, it appears that on the same day, March 23rd, 1844, Jimeno communicated to the alcalde the order of the governor, that the sobrante solicited by the Romeros should be measured, and

that if it should be necessary a measurement of the adjoining ranchos should also be made, with the understanding that the parties who should become "agraciados" should bear the expense.

It is evident that up to the date of the last order of Micheltorena, no grant of the land had issued. That, pursuant to the recommendation of Jimeno, the governor declined to make even a provisional grant, as solicited, and the final action in the matter was deferred until a measurement should be made, and until Romero and Soto should present themselves.

Jimeno does not seem to have finally adopted the opinion of the alcalde, that Soto had forfeited his rights to the land, for he recommends to the governor, as we have seen, that the land should be measured without delay, and that *then* "Romero should *present himself*, joined with Señor Soto, *who says he has a right to the same land.*"

In this recommendation the governor concurs.

114 There is certainly nothing in these proceedings which indicate that the governor had finally determined to grant the land, tho' it is evident that he regarded the application with favor. Still less can any of the orders made by him be construed to import a present grant. On the contrary, it is clear that the governor refuses to make even a provisional grant, but insists that a measurement shall first be made, and then that Romero and Soto shall appear before him, evidently with a view of determining the rights of the latter. The subsequent proceedings, as shown by documents exhibited by the claimants, confirm this view.

On the 15th January, 1847, Romero and Garcia, the present claimants, appeared before John Burton, the alcalde of San José, and execute a paper in the presence of the alcalde and two witnesses, reciting a sale by Romero to Garcia of one-half the land, and stipulating that both parties should remain *subject to the final result, if the government grant it in ownership*, "and if the contrary should be the case, then Garcia should lose equally with Romero, without any right to reclaim the consideration paid." This paper is signed by the parties, the alcalde, and the witnesses.

On the 28th May, 1847, José Romero addressed a petition to
115 John Burton, alcalde of San José, presenting that as early as 1844 an order from the former government had been sent to the alcalde's court requiring a measurement of the land called "Juntas." That such measurement had not yet been made. He therefore solicits the alcalde to give him a testimonial of the reports which, in the year 1844, were sent to the government, "*so that we can be granted said land.*"

The alcalde, in a marginal order, directs that the land should be measured according to the original order of the supreme government.

In the margin of the order transmitted by Jimeno, under date March 23d, 1844, the alcalde writes: "Be it done accordingly on the 9th April, 1847. The interested parties will proceed to take possession of the mentioned land according to the order of the government. I further order that in case any bordering land-owner demand it, a mensuration of his land be ordered.

"JOHN BURTON, J. P."

[REC. CLXXX, D. T. 1862]—4

It appears, moreover, that about two months before the date of their last petition, viz, on the 31st March, 1847, José Romero had addressed a petition to the same alcalde, representing that in some years before he had solicited a piece of land in the Cañada de San Ramon, and bordering upon lands of Don M. Castro, and that his excellency had ordered the lands of Castro to be measured, which had never been done.

The petitioners further stated that they were two brothers, with a numerous family, and were without any piece of land whatever to raise cattle; they therefore begged the alcalde to provide for them as soon as possible, that they might retain and locate their stock.

The alcalde, on the 5th April, orders that the fulfilment of the superior order should be at once proceeded to.

The entry in the marginal order transmitted by Jimeno was made on the Romero's petition of the 31st March, and not on that of the 28th May, above referred to, for it directs the measurement to be proceeded to on the 9th April.

And finally, on the 27 Dec., 1847, H. S. Demick, then alcalde, makes an order in which, after reciting that disputes as to the boundaries existed between the Romero and Domingo Peralta, he directs that the boundaries be established and adjusted in the manner specified in the order of the governor dated 23rd March, 1844.

I have stated the contents of these various documents with some particularity, because an attempt has been made since the rejection of the claim by the board to show by parol that a final grant issued to the Romeros, which has been lost.

117 We have seen that the last document in the expediente is the order of the governor of the 23rd March, 1844, adopting Jimeno's recommendation that a measurement should be made before issuing the final grant, or even a provisional one, as solicited by Romero—and even then it does not seem that the grant was certainly to be made, for Romero and Soto were to "present themselves," evidently for the purpose of enabling the governor to ascertain their respective rights.

Nothing further seems to have been done either by the government until 1847. On the 31st March of that year we find the Romeros representing to the alcalde that the governor had some years before ordered the land to be measured, which had not been done; and that they were without any piece of land whatever, and they beg the alcalde to provide for them. The alcalde thereupon directs that the superior order of March 23, 1844, be proceeded to.

On the 28th May, 1847, the Romeros again petition the alcalde, representing that as early as 1844 the governor had sent to the alcalde's court an order requiring a measurement of the land. They therefore ask a testimonial of the reports and orders in his office, "so that *we may be granted the land.*" The alcalde again directs

118 the superior order of March 23d, 1844, to be complied with.

And on the day following a declaration is made before the alcalde by Antonio M. Pico that Don J. Moraga and Don L. Pacheco, the colindantes, had declared that for their parts the surplus of land which does not belong to them "*could be granted to the Romeros.*"

And, finally, the deed from Romero to Garcia of January 15th, 1847, expressly stipulates that both the parties to it should remain subject to the final result, "*if the government grant it in ownership, and if the contrary should be the case, then Garcia should lose equally with Romero, without reclamation.*"

These documents appear to me to establish beyond doubt that all action of the government on the application of the Romeros terminated with the order of March 23, 1844, directing the measurement as an indispensable preliminary to a grant, either final or provisional.

That during the year 1847 the petitioners made several attempts to have that measurement effected, but apparently without success; and that up to December, 1847, neither they nor any one else pretended that the order of March 23, 1844, was not the last act of the government in the premises.

The parol testimony offered to prove that a grant was issued will be briefly adverted to:

C. Brown swears that the Romeros have lived on the rancho since 1840, and that he always understood they had a grant. He does not pretend to have seen it.

James M. Tice swears that he has searched for the title papers but has been unable to find them. J. J. P. Mesa saw a bundle of papers in Romero's hands on his return from Monterey, in 1844.

The bundle was not opened, but Romero *said* they were his title papers. He subsequently saw Micheltorena's order for the measurement of the land. He does not pretend to have seen any grant. It is to be observed that Mesa was examined before the board and did not mention this circumstance, and that he can neither read nor write. Inocencio Romero, who disclaims any present interest in the land, swears that he had a grant, that he gave it to Mr. Tingley to be presented to the board, and that since then he has not seen it. He also states that the grant was made by Micheltorena a short time after he arrived in the country, and that Arce, who was then his secretary, delivered it to him.

The expediente, however, shows that Jimeno was the secretary at least until March 23, 1844; and as it is clear that at that date the grant was suspended until a measurement should be made, the title papers seen by Mesa in the hands of Romero on his return from Monterey, in 1844, must have been only the papers now produced.

The testimony of Mr. G. B. Tingley is the only evidence in the cause which approaches proof that a grant issued.

This witness swears that on the trial of a suit between Domingo Peralta and the Romeros a grant from Micheltorena to the latter was produced in evidence; that the petition was for a *sobran*te; that the signatures were genuine, and that one Sandford took the papers and he has never seen them since.

On his cross-examination he states that the papers produced were the original petition and the marginal order of reference; an information signed by A. Pico; then a decree of concession; and final, a title in form, with a condition that the grant should not interfere with the adjoining grants.

If these papers were produced they must all, with the excep-

121 tion of the grant, have been procured from the archives.

For the petition, the informes and the decree of concession form part of the expediente, which remains on file.

That expediente is in evidence in this cause, and contains no decree of concession whatever nor any draft or "borrador" of the formal title delivered to the party, as is almost invariably the case where such a document issued. On the contrary, the last order of governor in effect refuses, as we have seen, to grant the petition for even a provisional title until a measurement was made, which clearly was not done until after December 1847, if at all.

Besides, if all these papers were procured from the archives, and were delivered to Sandford, how does it happen that only a part of them were restored to the archives and are now produced.

José Ramon Mesa, a witness produced on the part of the U. S., testifies that he was present at the trial of the suit referred to by Mr. Tingley. That no formal title was produced by the Romeros, but only a provisional license to occupy, subject to the boundaries of the neighboring proprietors, during the pendency of the proceedings to
 122 obtain a title. The witness further swore that he heard Inocencio Romero state to Domingo Peralta, in reply to an inquiry as to what title he had, that he had no title—that all he had was a provisional license. That on several occasions he heard Garcia say that he had no title, and that he had intended to take steps to get one, but that all he had was a "provisional license."

This provisional license is in all probability the order made by John Burton, justice of the peace, in April 1847, on the margin of the governor's order of March 23d, 1844, for the measurement of the land, and was in compliance with Romero's petition to him of the 31st March, 1847. The justice of the peace directs that "the interested party will proceed to take possession of the land according to the order of the government," &c. As a copy of Jimeno's order, with this marginal entry of Burton, appears to have been furnished to Romero, and by him sent to Garcia, it is in all probability the "license" referred to. It will not be pretended that any rights could be conferred by such an order of an American justice of the peace, in April 1847.

The record of the suit between Peralta and the Romeros has
 123 been produced. It contains no evidence whatever even tending to show that a grant was produced at the trial.

Antonio M Pico, a witness produced by the claimants, swears that he received an order from the governor to put the coterminous neighbors, Pacheco and Moraga, into possession of their lands, and to measure the same for the purpose of separating them from those of the Romeros. That he was directed by the same order to put the Romeros in possession of the overplus. That he summoned the colindantes, but they did not appear. That he did not then execute the order but repeated the summons to them. That the Romeros made a complaint to the governor, and he, the witness, received from the latter a new order to carry the former into effect, upon which he told the Romeros to go there and settle, which they did in 1844. This witness explicitly states that no title to the land in favor of the Romeros was ever exhibited to him.

The orders referred to by Pico are obviously those contained in the expediente. The first order did not, as he supposes, direct him to put the Romeros in possession, but only to measure the land and certify the result, so that it may be granted. Romero's complaint or petition to the governor, stating the failure of the alcalde to
 124 measure the land, and asking for a provisional grant, we also find in the expediente, and also the 2nd order of the governor, which, like the former, only directs the measurement of the land. The governor having, as we have seen, adopted Jimeno's recommendation, that the land should be measured and Soto and Romero should present themselves before any grant should issue.

On the parol proof alone, I should come to the conclusion that Mr. Tingley is mistaken in supposing that a grant for the land was ever produced. But the evidence afforded, not only by the expediente but by the repeated declarations of the Romeros themselves, in their various petitions and in the conveyance to Garcia, remove every possible doubt on the question.

The facts of the case are unmistakable. The Romeros solicited land which the governor was disposed to grant. He directed a measurement preparatory to making the grant. And this measurement never was effected. I cannot perceive how this court can recognize these proceedings as giving any title to the land. It may be admitted that in 1844 they went upon the land, as stated by Pico, tho' if
 125 so, it is singular that John Burton, alcalde, should in April, 1847, have ordered "the interested parties to proceed to take possession of the mentioned lands, according to the order of the government."

But this occupation, not authorized, so far as appears, by the government, and only made in pursuance of a verbal permission of Pico, and without the measurement of the land, as required by both orders of Micheltorena, can hardly be deemed to have conferred any title, either legal or equitable, upon the claimants.

The case is, perhaps, a hard one, for there seems no reason to suppose that the grant would have been refused if the measurement had been made and Soto's rights had been found to have been forfeited. But no grant, either perfect or inchoate, was made, nor any promise given that one should be made.

The petitions were favorably received, a provisional grant refused, and a measurement directed. There the action of the government ended, and certainly such proceedings did not confer such a right of property in the land as this court can recognize.

The claim must be rejected.

Endorsed: Filed Sept. 16th, 1859.

W. H. CHEVERS,
Deputy Clerk.

127 *Order granting stay of proceedings for one week.*

United States district court, northern district of California.

THE UNITED STATES }
 vs.
 INOCENCIO ROMERO *et al.* }

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Friday, the 18th day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES }
 vs.
 INOCENCIO ROMERO *et al.* } No. 304.

On motion of E. A. Lawrence, counsel for claimants, it is ordered that a stay of proceedings for one week be allowed, to enable claimants to move for leave to open case and to produce further testimony.

Filed September 18th, 1857.

JOHN A. MONROE, *Clerk.*
 By J. EDGAR GRYMES, *Dep't.*

128 *Motion and affidavits of E. A. Lawrence.*

In the district court of the United States for the northern district of California.

INOCENCIO ROMERO }
 vs.
 THE UNITED STATES. } No. 304.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*:

E. A. Lawrence, of said county, being sworn, says that he is the same who has heretofore made his affidavit on this motion; that he has procured the affidavits of Richmond & Winston since making his last affidavit, which are filed herewith; that he has, at great expense, sought to procure the original title papers in said cause, which he is informed and verily believes were last in the possession of said Sanford, and contained in a box or trunk, left by him at Benecia, containing his papers; that he has used extraordinary diligence in endeavoring to find said trunk or box containing said Sanford's papers, but has been unable to find the same, and verily believes that they have been lost or destroyed.

Deponent further says that he has been informed by Francisco Arce and Manuel Castro that an honest and *bona fide* title issued to the

Romeros from Micheltoreno; that said Arce told deponent that he (Arce) wrote the original petition for the Romeros, and, that by
129 documents in his possession at San Luis Obispo, he would be able to give documentary evidence of the dates of the grant and other matters showing its existence. Deponent further says that said Arce is now in the southern district and beyond the jurisdiction of this court, and that his testimony can only be taken by deposition; that he declined to make an affidavit until after consulting his papers, and that deponent has therefore been unable to procure the same.

Deponent further says that Francisco Arce told deponent that Francisco Soto had a spite against one of the Romeros and put in his application for the said ranch for the purpose of preventing the Romeros from obtaining a grant, but that subsequently this matter was arranged, and the grant to the Romeros issued.

Deponent further says that he is informed that Innocencio Romero will testify that Francisco Soto put in a petition for a portion of the same ranch, but that Micheltoreno refused Soto's petition, on the ground that one ranch, the San Leandro ranch, had been granted to him, and that he could not have two ranches granted to him.

Deponent further says that he has carefully examined the cases in the surveyor general's office, which were presented to the land commission for the purpose of finding said petition of Soto and the proceedings thereon, but deponent says that there is no petition presented in behalf of Soto or his heirs for any ranch except the
130 claim of Barbara Soto and al., claimants for the San Leandro ranch, as the heirs of Francisco Soto, that there is no expediente in the surveyor general's office, or any other manuscript, shewing any petition for said ranch by Soto, or any other person for him.

This deponent further says that he is satisfied that considerable testimony can be taken at Monterey, the former capital of California, of which this deponent is now ignorant, tending to shew the existence of a grant to the Romeros.

This deponent further says that he is fully convinced and satisfied, from his examinations and investigations in reference to the title to said ranch, that the same was granted to the Romeros in good faith and in absolute property, and that the title papers are now lost, as above mentioned.

Deponent further says that he has been informed by Innocencio Romero, and expects to prove by him, that his two brothers can neither read nor write; that Burton, the alcade at San José, drew up most of the papers which were filed in the alcade's office himself, without the knowledge of said Innocencio, he having been a friend of the Romeros, and was endeavoring to assist them in fixing their boundaries.

E. A. LAWRENCE.

Sworn to and subscribed to before me this 23d day of Nov., 1857.

J. EDGAR GRYMES, *Deputy Clerk.*

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Dep. Clerk.*

Petition for rehearing.

131 In the district court of the United States for the northern district of California.

INNOCENTIO ROMERO, *et al.* }
 vs. } No. 304.
 THE UNITED STATES. }

NORTHERN DISTRICT OF CALIFORNIA, *ss* :

The petition of the claimants in the above entitled cause respectfully represents to this honorable court—

That since the rendition of the opinion of the court herein, rejecting said claim, they have become acquainted with new and important and material facts to prove the existence of said grant, and the loss of the same, which said facts were before to your petitioners unknown, and which said facts appear more fully from the affidavits hereto attached, and forming part of this petition; that said petitioners made diligent efforts to procure similar testimony before said cause was submitted for decision, but that they were unable to procure the same, as more fully appears by the affidavits hereto attached.

Wherefore your petitioners pray this hon. court to grant a rehearing of said cause, and that the same may be restored to the callendar for further proofs and for such other relief as shall seem meet in the premises.

J. B. CROCKETT,
 Att'y for Petit.
 E. A. LAWRENCE,
 Att'y for A. C. Campbell.

Filed Nov. 20, 1857.

J. EDGAR GRYMES, *Dept. Clk.*

Affidavit and motion of E. A. Lawrence.

132 In the district court of the United States for the northern district of California.

INNOC. ROMERO *et al.* }
 vs. } No. 304.
 THE UNITED STATES. }

NORTHERN DIST. OF CALIFORNIA, *ss* :

E. A. Lawrence, of said county, being sworn, says that he has been engaged as counsel in the above cause with J. B. Crockett, esq'r, the att'y of petitioners, for the last 10 or 12 months; that he became counsel therein by reason of purchase of a portion of said ranch at that time.

Deponent further says that immediately after his said purchase he devoted his whole attention to the prosecution of said claim before this court; that he took the testimony which was taken in this court on behalf of the claimants; that he made a diligent and careful search and inquiry after the original title papers in said cause, but from the information which he was enabled to obtain he verily believes said title papers were lost; that with that impression and belief he took

such secondary evidence of the existence, loss, and contents of said title papers as came to his knowledge, after a careful inquiry, for such testimony in places and from persons where the same was most likely to be found ; that the testimony heretofore taken herein was

133 all the testimony which deponent was aware of and enabled to obtain, before the submission of said cause, which deponent considered at all material or reliable in said cause ; that deponent knew of the existence of other witnesses who could, in some minor points, corroborate the testimony of Mr. Tingley and others, but which testimony could add no more force to the testimony already taken, and which was withheld as immaterial by advice of Col. Crockett and other parties interested in the prosecution of said cause.

Deponent further says that since the publication of the opinion of the court in this cause he has heard of very important testimony of which he was heretofore entirely ignorant ; that said testimony is embraced in the affidavits of Judge Redmond and others herewith filed ; that said Redmond was discovered as a witness in this cause by mere accident from hearing some remarks of C. B. Strode, esq., in the International Hotel in this city several days after the decision of said cause, and while he was in this city on a temporary visit. Deponent further says that the atty's and parties interested in said cause were entirely ignorant of the value of the testimony of C. B. Strode until after the publication of the opinion of the court herein ; that said opinion occasioned talk and remarks which led claimants to the discovery of this and other testimony of which they were before

134 entirely uninformed.

Deponent further says that he has made every endeavor to find the original title papers in said cause ; that he has procured persons to go to Benicia and search for the title papers among the old papers of Mr. Sanford ; that said persons have been unable to find said Sanford's papers, as appears from the affidavits herewith filed. Deponent further says that he has caused letters to be addressed to Mr. Winston and Mr. Richmond in the northern portion of this State to ascertain if they have said Sanford's papers, and that he has not yet been able to ascertain that said papers are now in existence, and he verily believes the same to be lost.

Deponent further says that he has been informed by Manuel Castro, former prefect of California, that he and Francisco Arce and two others, clerks under Micheltoreno and now living at Monterey, can all testify positively as to the existence and due execution of the original grant of said rancho from Micheltoreno to the Romeros.

Deponent further says that this affidavit and motion are not made for the purpose of delay, but to further the ends of justice, and further says not.

E. A. LAWRENCE.

Sworn and subscribed before me this 5th day of October, 1857.

JNO. A. MONROE,
U. S. Commissioner.

Filed Nov. 20, 1857.

J. EDGAR GRIMES, *Deputy Cl'k.*

135 *Affidavit of J. W. Redmond, admitted as deposition by stipulation, p. 241.*

In the district court of the United States for the northern district of the State of California.

INNOCENTIO ROMERO <i>et al.</i>	}	No. 304.
<i>vs.</i>		
THE UNITED STATES.		

NORTHERN DIST. OF CALIFORNIA, ss :

J. W. Redmond, of Santa Clara county, being sworn, deposes and says that he is a practicing attorney and has been for many years ; that in 1849 he crossed the plains and arrived in California in August and settled in San José, and has resided there ever since ; that he is a good latin scholar and learned the Spanish language with great facility on account of his knowledge of the latin : that he was elected county judge of Santa Clara county in April, 1850, on the first organization of the county, which office he held for more than three years, when he resigned ; that previous to and during this period deponent was and still is a practicing attorney, practicing in all the courts excepting his own court ; that he applied himself very diligently to learning the Spanish language, and in 1850 was sufficiently proficient therein to hold conversations and interpret title papers ; that he had seen many of the acknowledged signatures of Micheltoreno, and was familiar with his handwriting from comparison ; that the principal business of deponent was connected with the examination and investigation of Spanish titles ; that he was employed in almost every case pertaining to Spanish titles in San José ; that he was engaged on one side or the other in nearly every case except in his own court, where there were law suits about Spanish titles.

Deponent further says that in 1850 he was employed by one Attozo or Attoza, a South American, to search the title of the Romeros to the tract of land in the county of Contra Costa, which said ranch is the subject matter of this suit, and to report to said Attoza as to the genuineness and validity to said title ; that said Attoza was about to purchase a portion of said ranch and called on deponent 3 or 4 times in regard thereto ; that deponent had all the original title papers of the Romeros to said ranch in his hands at that time and carefully examined the same ; that deponent had said papers in his possession for two weeks ; that during the day he was engaged in court, but in the evenings and leisure time carefully examined said title papers ; that the signature of Micheltorena to said documents were genuine, as deponent believes from his familiarity with his said signature ; that said grant was a grant in fee of the land, and was in the usual form of such Spanish concessions made by Micheltoreno, and was on stamped paper ; that deponent was perfectly familiar at that time with such Spanish documents ; that he had examined very many Spanish titles at Monterey, Santa Cruz, San José, and Martinez, in all of which towns deponent practiced.

Deponent further says that he examined said title ; that it constituted a bundle of papers, sewed together, containing a petition by the three brothers Romero for the land, the reports of the alcalde Pico, also by Jimeno ; also a desiña or map of the land, and a final concession by Micheltorena, in full and absolute property of the land solicited ; that said title was full and complete, with the exception that it lacked the approval of the departmental assembly ; that the description of the ranch was the sobrante, or all the land lying between the ranches of Julien Welch, Moraga, and Pacheco, and the surrounding neighbors, and had a Spanish name, which deponent has now forgotten ; but deponent says he was upon the land either in the latter part of 1850, or early in 1851 ; that he had his notes of the grant with him, or the grant itself, at the time he was on the ranch, and knew the land ; that it was situated in Contra Costa county, and negro Garcia was living on the land at that time ; and deponent stoped 2 nights and 3 days with him at his house.

Deponent further says that he examined said title in connection with Geo. B. Tingley and Hon. James M. Jones, who is now deceased, and late judge of the district court of the southern district of California ; that said Jones was an excellent Spanish scholar ; that all three pronounced said title to be as valid and genuine a title as any in California, with the exception that it had not been approved by the departmental assembly ; that said title was a full and absolute concession of the land ; that upon said examination he advised said Attozo that it was safe to purchase, as said title was a good and valid title to the land.

Deponent further says that afterwards, and during same year, or early in 1851, he was employed by negro Garcia to defend a suit bro't by Domingo Peralta *vs.* Garcia and Romero, in relation to a portion of this same land ; that on the trial of said suit it became necessary to introduce the title papers of the Romeros above mentioned, and that they were had in court, and were examined and handed to the jury without objection, and were admitted by Mr. Sanford, the opposite counsel, to be a genuine and valid title to the land ; that deponent further says that he again at this time examined said title, and found it to be the same as before mentioned ; that the only point raised on said trial was that the title of Peralta was the oldest title, and that

therefore he was entitled to the land, the dispute being only a dispute as to boundaries, the titles not being denied on either side ; deponent further says that Geo. B. Tingley was associated with deponent in the trial of said cause.

Deponent further says that Sanford, the attorney for Peralta, had a dispute with Garcia about an old fee which Sanford claimed as due him from Garcia, and which Garcia had never paid ; that Sanford told deponent that he (deponent) would never get any fee from Garcia, as Garcia never paid any fees, and had never paid him the fees due him from Garcia ; that the last deponent ever saw of said title papers they were in the hands of the jury on that trial ; that he supposed the said papers belonged to the court, and he did not take them from the court, and did not know until recently that they had been withdrawn from its custody ; that who took said papers after said trial, or what

became of them from that day to this, deponent is entirely ignorant ; that said case afterwards went to the supreme court, but upon points not involving the validity of the title on either side.

Deponent further says that John Burton was alcalde at San José in 1847 ; that he is now dead ; that said Burton was an English sailor and a very illiterate man ; that he understood the provincial Spanish ; both wrote and spoke it very imperfectly ; that deponent has
140 had frequent occasion, both as a judge and as an attorney, to examine his records, and that the same are very imperfect.

Deponent believes that he has seen said Burton, and thinks that he has known him personally, but that the knowledge of the matters of which he speaks was derived from his examination of his papers and records, and from common report at San José, and from his records and official documents having been frequently the subject of proof and judicial investigation before deponent as a judge and as an attorney.

J. W. REDMOND.

Sworn and subscribed to before me this 25th day of Sept., 1857.

JNO. S. HAGER,
Dist. Judge 4th Ind. Dist.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES,
Deputy Cl'k.

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U. S. Dist. Court.

INNOCENTIO ROMERO }
vs. } No. 304.
THE UNITED STATES. }

NORTHERN DISTRICT OF CALIFORNIA, ss :

Affidavit of Geo. B. Tingley.

Geo. B. Tingley, of said county and district, being sworn, says that he is the same who was examined in the above entitled cause. Deponent further says that he stated upon said examination, and now says, that he carefully examined the original title papers of the Romeros, in said cause ; that the same were a bundle of papers, commencing with the original petition, the informe, &c., and ending with an absolute grant of the land. Deponent further says that he has examined this day the Spanish documents, being 7 in number, attached to the deposition of his before the land commission, now on file in the surveyor general's office, and says that they are not the papers which he testified to in his previous examination ; that those papers are bound together and do not have the appearance of ever having been.

Deponent further says that he was at the time of said trial perfectly familiar with Spanish grants ; that a large portion of the business of deponent at that time was connected with the examination of Spanish titles ; that he was sufficiently familiar with the Spanish
142 language at that time to read and understand titles to lands, and

knows the title of the Romeros was a concession in fee of the sobrante, as stated in deponent's deposition.

Deponent further says that previous to this time he was called upon by one Attozo, who was about to purchase a portion of said rancho, to examine and report upon the title; that said title papers were placed in his hands for examination; that after a careful examination of said papers he pronounced said title to be a genuine and valid title in full property and not a provisional grant. Deponent further says that it is his impression that Judge Redmond and James M. Jones, now deceased, of Santa Clara county, examined said title with deponent; that said Jones was a thorough Spanish scholar, and that it was the opinion of all three that said title was a valid title or concession, in the usual form, to the petitioners; the only question in the minds of deponent and the others was that said grant had not been approved by the departmental assembly, and there was a doubt at that time whether such grants were valid. Deponent gave his opinion that a title was valid without such approval.

Deponent further says that if the papers on file in the surveyor general's office are part of the papers used upon said trial, that they are not all of them; that there was an additional paper, 143 dated some time after the report of Pico, the alcalde, on which was a final concession of the land, in the usual form, conceding the land prayed for to the petitioners and their families, which said concession was signed by Micheltorena, and was much longer than any paper or memorandum signed by Micheltoreno in the surveyor general's office.

GEO. B. TINGLEY.

Sworn and subscribed before me this 24th day of Sept., 1857.

P. K. WOODSIDE,
Notary Public.

Filed Nov. 20th, 1857.

J. EDGAR GRIMES,
Dep't. Cl'k.

Affidavit of C. B. Strode.

U. S. district court for the northern district of California.

INNOCENTIA ROMERO *et al.* }
vs. } No. 304.
THE UNITED STATES.

NORTHERN DISTRICT OF CALIFORNIA :

C. B. Strode, of the city of San Francisco, being sworn, says that he is a practicing attorney in said city, and has been since the fall of 1850; that he now resides in Oakland; that immediately after his arrival in this city he went into copartnership with Wm. 144 Carey Jones in the practice of the law; that shortly afterwards Hon. P. W. Tompkins became a member of the same firm, under the name of Jones, Tompkins & Strode; that the principal business of said firm was the prosecution of land claims before the

board of commissioners to ascertain and settle private land claims in the State of California ; that after said Tompkins became a member of said firm the exclusive business of affiant was to attend to land claims ; that affiant imperfectly understood the Spanish language, but still, that he understood it sufficiently to read and interpret title papers ; but having a very large and lucrative practice, preferred, as a matter of expediency and justice to his various and many clients, to keep interpreters of the Spanish language constantly in his employment ; that being the partner who had most intercourse with the California land-holders, he was very frequently called into the country and country towns, on which occasions it was his custom to take an interpreter with him. That in 1850 and 1851 he was well acquainted with F. H. Sanford, esq., who represented himself as a native of Georgia ; that in 1851 affiant was keeping house in the city of San Francisco ; that on visiting said city said Sanford was in the habit of staying at the house of the affiant ; that in 1851 said Sanford told affiant that he was in great pecuniary distress ; that from time to time affiant gave him small pecuniary assistance ; that in 1852, and, as affiant be-
 145 lieves, in the latter part of said year, without any data to fix the exact period, affiant met said Sanford in the town of Benicia ; that said Sanford expressed his thankfulness to affiant, and desired additional pecuniary advances ; that said Sanford being an educated, and, as affiant believes, a pure man, without hesitation afforded him the assistance desired.

Affiant further says that at the same time he went to the office of said Sanford, esq., in Benicia ; that he found from conversation with said Sanford that he was partially deranged on account of domestic troubles, but, as affiant believes, perfectly sane on every subject not connected with his family affairs ; that in his office was a desk, a table, bed, trunk, and a box ; that said box was a common tea box, as it is commonly called, being of wood and painted ; that affiant's attention was particularly called to the said box and trunk at that time, and more particularly since ; that said Sanford told affiant in said office that he had in his possession an important paper, being the title paper to the Romero grant in Contra Costa county ; that he (Sanford) had taken possession of the same after a trial at law had in the pueblo de San José, because a debt was due to him by the party who was entitled to the title papers ; that affiant was at that time the attorney for several of the colindantes or adjoining rancheros, and for that reason felt a deep interest in ascertaining boundaries claimed by the said Romeros ;
 146 that to the best of his ability he read the said title papers ; that by his experience and examinations of similar documents he knew the signature of Micheltoreno ; that the grant was a concession to the Romeros in full and absolute property for the sobrante between various ranches which made an absolute definition of its boundaries ; but, that affiant, being diffident of his knowledge of the Spanish language, sent for his interpreter, Mr. Gutierrez, who he is now informed lives in the city of Havanna, Cuba ; it may be that affiant is mistaken and that Adolf Sellman is the one who was interpreter ; that he is informed said Sellman now lives in the mission of San José. But affiant felt deeply interested in said title because of its connection

with the surrounding ranches ; that after an examination and the interpretation of the title papers fully made to affiant—Judge Swan, of Benicia, was present at a portion of the conversation—Mr. Sanford proposed to place in the hands of affiant the said title papers, with the remark that affiant could make much money out of the same ; that affiant's reply was that he neither thought it decorous or just to obtain a fee for the production of title papers under such circumstances ; that affiant, about five years ago or more, told one party interested in said ranch of the existence of said papers ; that he is informed and verily believes that every exertion was made to obtain the same
147 by that party, and, as he is informed, without success ; that he was informed of the great pecuniary embarrassment of said Sanford ; that he has been informed that the trunk and box of said Sanford containing all his papers have passed into other hands ; that said Sanford left for Georgia in the latter part of 1852, as affiant verily believes ; that affiant saw said Sanford just before he left for the States, and that said Sanford told him (witness) that he was just returning to his family in the State of Georgia ; that said affiant does not know personally what became of the trunk, box, and papers of said Sanford, but has learned that the same may be in the possession of the Hon. Jos. Winston, or of Mr. Richmond, his former landlord, who seized upon his goods for rent due ; that no telegraphic dispatch would reach either of them from this city ; that both of them live in the northern portion of this State ; that affiant has written to both of said parties, both by mail and express, in order to ascertain whether either of them have said box and trunk or papers ; that he has not yet had sufficient time to obtain an answer from either, but expects to hear in a few days ; that affiant went on Monday last, in company with Mr. J. M. Tice, to Benicia to find said papers, trunk, &c., that being the last place of residence of said Sanford ; that they made diligent search for the same and often heard of the existence of them, and found what had
148 become of the signboard of said Sanford, but was unable to find said papers, all of which more fully appears by the affidavits procured by affiant in Benicia and filed herewith.

Affiant further says that the title papers examined by him were a considerable bundle of papers sewed together, commencing with the original petition by two or 3 brothers Romero, (affiant does not know which,) followed by the intermediate reports, and concluding with an absolute grant of the land in full property in accordance with the petition ; that the same was on ordinary Spanish stamped paper, unglazed ; that said final concession was in the usual form of Mexican grants and was for the sobrante, containing 5 leagues poco mas y menos, of the adjoining ranches of Moraga and Bernal, Guillermo Welch, Lorenzo Pacheco, and others.

Affiant further says that the final concession was a long document and signed by Micheltoreno, much longer than any paper now on file in the said cause in the surveyor general's office signed by Micheltoreno ; that he has examined the papers in the surveyor general's office and that they are not the same papers heretofore examined by affiant.

Affiant further says that said Sanford told deponent a few days be-

fore he left for the States that he had left the same title papers of the Romero ranch, together with his other papers, in a bundle in
 149 his trunk or box at Benicia, where deponent could find them if ever he should want them.

Deponent further says, I have carefully examined the docket of land cases before the land commissioners, &c., and do not find no Sanford's name as connected with any land case; and he told deponent that the Romero ranch was the only land title with which he was ever connected.

C. B. STRODE.

Sworn to before me this 25 Sept., '57.

JNO. A. MONROE,
U. S. Commissioner.

Filed Nov. 20, 1857.

J. EDGAR GRYMES,
Dep. Cl'k.

Deposition of Wm. McDaniel, admitted as deposition by stipulation on p. 241.

On application before the hon. the district court of the U. S. for the northern district of the State of California, to open the decree in the case of the Romero grant for land in the county of Contra Costa, Wm. McDaniel, a resident of Benicia, being first duly sworn, says that he assisted C. B. Strode for several hours in an endeavour to find the trunk and box or papers of T. H. Sanford, left in this town; that
 150 although they several times heard of the same as being or having been here after Mr. Sanford left, yet after an earnest and diligent search the same could not be found; that information apparently tending to a discovery was all that could be found by communicating with persons in the northern portion of this State; that I have ascertained that a telegraphic dispatch could not reach the parties alluded to; that he has no interest in the result and does not know what the result of titles will be, but can safely say he deems it of importance to consult with the witnesses, Hon. J. Winston and J. Richmna, and further says not.

WM. M'DANIEL.

Subscribed and sworn to before me this 22nd day of September, A. D. 1857.

WM. S. WELLS,
Notary Public Solano County.

Filed Nov. 20, 1857.

J. EDGAR GRYMES,
Deputy.

Deposition of Edw. L. Stetson.

State of California, district court U. S. northern district of California.

On motion to open decree on the Romero claim in the county of Contra Costa, E. L. Stetson, a resident of Benicia, being
 151 first duly sworn, says that in the year 1851-1852 he was well acquainted with F. H. Sanford, an attorney at law; that he

met said Sanford in Sacramento, as well as he can remember, in 1852; that said Sanford informed affiant that he was about starting home, but that his clothing and papers were retained in Benicia for a small debt, and that all he needed was enough to get his clothing back; that he knew the furniture in the office of said Sanford in Benicia; that he feels certain that he has seen the trunk and box of said Sanford since he left, which he believes was about the last of 1852; that from common rumor he is informed said Sanford is dead; that affiant has assisted C. B. Strode in a careful search for said trunk and box, but without success; that he knows an earnest and active search has been made for the same.

Further he says not.

EDW. L. STETSON.

Subscribed and sworn to before me this 22nd day of September, A. D. 1857.

WM. S. WELLS,
Notary Public, Solano County.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Deputy.*

152

Deposition of Thomas M. Swan.

United States district court in and for the northern district of the State of California.

To open the claim on the Romero grant in the county of Contra Costa.

Thomas M. Swan, being first duly sworn, on oath states that he has been a practicing attorney in, and is now the county judge of, the county of Solano.

That in the years one thousand eight hundred and fifty-one and fifty-two he was acquainted with T. H. Sanford and Charles B. Strode.

That said Sanford left the State of California for the State of Georgia some time in the year one thousand eight hundred and fifty-two or three, as deponent was informed by said Sanford and verily believes. That some time therebefore deponent was present at a conversation between the said Sanford and the said Strode, in the office of the said Sanford in the city of Benicia, county of Solano, relative to the title papers of some rancho in the county of Contra Costa, the particular purport of which deponent cannot recollect save the general matter of conversation. That prior to the departure of said Sanford from this State he had for some time been absent from the town

of Benicia, and during the absence of said Sanford from Benicia a trunk and box containing clothing, family portraits, and valuable papers were detained by John B. Richmond, the former landlord of said Sanford, for rent over due and unpaid by said Sanford, and that deponent, for the purpose of releasing the clothing and other articles of said Sanford, paid sixty dollars in the scrip of the county of Solano as rent to said Richmond.

THO. M. SWAN.

[REC. CLXXX, D. T. 1862.]—5

Subscribed and sworn to before me this 22nd day of September, A. D. 1857; words and "other articles," "trunk and box," first being interlined.

WM. S. WELLS,
Notary Public, Solano County.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES,
Deputy Cl'k.

154

Deposition of Bernard C. Whitman.

STATE OF CALIFORNIA,
County of Solano :

Bernard C. Whitman, being first duly sworn, on oath states that he is an attorney-at-law, and a resident of the town of Benicia, in said county of Solano, and was a resident of said town during the years one thousand eight hundred and fifty, fifty-one, two, and three; that in the years one thousand eight hundred and fifty and fifty-one, or a portion thereof, deponent knew F. H. Sanford, then formerly from the State of Georgia, as an attorney in said Benicia; that some time during the year one thousand eight hundred and fifty-one said Sanford left the town of Benicia for the purpose, as he, said Sanford, avowed, of going to the northern portion of the State of California; that subsequently, on two or three occasions, deponent saw said Sanford in the town of Benicia, and toward the close of the year one thousand eight hundred and fifty-two deponent saw said Sanford in Benicia, when he informed deponent that he intended to depart from the State to his former residence in the State of Georgia, and was then on his way to San Francisco to take the steamer for Panama "en route" for the Atlantic States; and further told your
155 deponent that he, said Sanford, desired deponent to take charge of certain valuable papers which had been deposited with him, Sanford, in his capacity as an attorney-at-law, which deponent then and there agreed to do, but never so did, for that *since* Sanford never afterwards spoke to deponent on the subject, or deposited said papers with deponent.

That deponent is informed and believes that said Sanford did, on or about the time last mentioned, depart from this State for the State of Georgia, and deponent has heard and believes that Sanford arrived in the State of Georgia, and there lived some time; and recently deponent has been informed and believes that said Sanford is dead, and such is common rumor upon the subject.

Deponent knew said Sanford quite well during his residence in this State, and was of the opinion, from the peculiar conduct of said Sanford on sundry occasions, that at times he was hardly sane, though deponent may have been induced to such belief from communications to him made by said Sanford relative to his troubles and difficulties. And further deponent saith not.

BERNARD C. WHITMAN.

Subscribed and sworn to before me this 22nd day of September, A. D. 1857.

WM. S. WELLS,
Notary Public, Solano Co.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Deputy Cl'k.*

156

Deposition of Artemas W. Wall.

U. S. district court for north district of California.

INNOCENTIO ROMERO *et al.* }
vs. } No. 304.
THE UNITED STATES.

Artemas W. Wall, of the county of Contra Costa, being sworn, deposes and says, that some time during the year 1852 or 1853, he, deponent, was present on the occasion of a conversation held between Chs. B. Strode, esq., and other persons; that the said conversation was on the subject of Spanish grants, and especially relative to the Romero rancho, in Contra Costa county; that on that occasion said Strode stated to the persons with whom he was conversing that he had had the privilege of examining the grant to said Romero rancho; that it was a perfect grant made by Governor Micheltorena; and that said grant was then, as he, said Strode, believed, in the possession of a man whose name deponent does not now recollect; that on a certain occasion said man offered to deliver over to him, said Strode, said grant; that he, said Strode, at that time examined said grant very closely, as he was then engaged in the cases of adjoining ranchos; but that he declined receiving said grant into his possession,
157 owing to the peculiar circumstances under which it was offered to him, said Strode.

A. W. WALL.

Sworn to before me this 25th September, '57.

JNO. A. MONROE,
U. S. Commissioner.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Deputy Cl'k.*

Deposition of Cornelius Yeager.

In the district court of the United States, northern district of California.

INNOCENTIO ROMERO *et al.* }
vs. } No. 304.
THE UNITED STATES.

NORTHERN DISTRICT OF CALIFORNIA:

Cornelius Yeager, being sworn, says that he is now county clerk of Contra Costa county, and resides in the town of Martinez; that he has an interest in the Romero ranch; that he purchased said interest in 1851; that previous to and in contemplation of said purchase, he and one John M. Jones, who now lives on said ranch, went to consult

158 Mr. Geo. B. Tingley, who was at that time a prominent attorney in San José, in regard to the validity of the Romero title; that at said interview in said Tingley's office at San José, he (said Tingley) told this deponent and said Jones that he was perfectly conversant with Spanish titles, and particularly with the Romero title; that he had gone over all the title papers in said case, in a lawsuit between Peralta and the Romeros, and was perfectly familiar with them; that the title to said ranch was as good and honest and valid as any in the State of California, and said to us in familiar language, "Go on, boys, and buy, for you are perfectly safe on that title." Deponent further says that he and said Jones went to San José to consult Mr. Tingley professionally in regard to said purchase.

Deponent further says that in June or July, 1851, he met Mr. C. B. Strode on said Romero rancho, and took him to the house of Capt. Wall, one of the owners occupying of said ranch, for the purpose of finding out as to the validity of said title; that at that time said Strode had a great reputation all through the country for a knowledge of Spanish grants and titles; that said Strode then told deponent and said Wall that he had seen said title papers of the Romeros, and had read them; and that their title was as perfect and valid as any title in California; and that they were perfectly safe in purchasing under it; that he was not attorney for the said ranch, but that, notwithstanding that, he felt that he was not authorized to withhold from them information in regard to the whereabouts of the title papers to which they were justly entitled as owners of said ranch; and that he had seen said papers in the hands of Mr. Sanford, an attorney who had been living at Benicia; that he had seen and read said papers in Sanford's office at Benicia, and that the title was indisputable; that said Sanford was at that time somewhere in the mines. Deponent further says that his answer was, in reply to deponent's statement to said Strode, that he had a great deal of difficulty in finding the title papers of said ranch.

Deponent further says that he has made every endeavor to find said title papers, that he has always heard of the existence of said title and has spent over \$100 in travelling around from place to place to find said title; and that he has been unable to find them, and that he verily believes that said title papers are now lost. Deponent further says that in 1852 the owners of said ranch assembled in Martinez and by vote deputed deponent to procure counsel, search for the title papers, and procure witnesses to present and prosecute said claim before the land commission; that this was prior to deponent's making any effort to procure said title papers, as above mentioned.

CORNELIUS YEAGER.

Sworn and subscribed before me this 29th day of September, 1857.
P. K. WOODSIDE, *Notary Public*.

Service of the within petition and affidavit, admitted this 5th day of Oct., 1857.

P. DELLA TORE, *U. S. Att'y*.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Deputy Cl'k*.

Deposition of John B. Richmond.—Stipulation, p. 241.

STATE OF CALIFORNIA,

County of Nevada, ss :

John B. Richmond, of lawful age, at present residing in the town and county of Nevada, State of California, being duly sworn, deposes and says:

That in the year 1851 he resided in the town of Benicia, California; that early in the spring of said year E. H. Sanford, a lawyer,
161 rented of him an office in the upper story of the store occupied by him, and used and occupied the same until some time in the spring of 1852, at which time Sanford left Benicia and went to the southern mines. At the time he left, or shortly after, his trunk, containing his effects, was removed and placed in the loft of the building, and there remained until about the time that Sanford left for the Atlantic States, which I think was in 1853. He came down from the mountains, and, as affiant was at that time informed by the occupants of the store, (himself being at that immediate time in San Francisco,) got his trunk and started for San Francisco, complaining, at the time, that he had lost some valuables from his trunk, as this affiant was informed by the parties in the store as aforesaid. And further this deponent saith not.

JOHN B. RICHMOND.

Subscribed and sworn to before me this 6th day of November, A. D. 1857, as witness my hand and seal.

THOMAS P. HAWLEY,
Notary Public, Nevada County, California.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES, *Deputy Cl'k.*

162 *Deposition of Joseph Winston.—Stipulation, p. 241.*

STATE OF CALIFORNIA,

Plumas County, ss :

Before me, the undersigned, notary public in and for the county of Plumas, State aforesaid, personally appeared Joseph Winston, who, being by me duly sworn, deposes and says that during the winter of 1853 and 1854 he was residing in the city of Benicia, in Solano county, State aforesaid; that he and one F. H. Sanford, a lawyer by profession, occupied adjoining rooms of the upper story of a building, the lower story of which was occupied as a store or storehouse by John Richmond, or by John Richmond & Co.; that during said winter the said Sanford left the State of California; that said Sanford left in the room occupied by him a trunk and a painted box, in which were contained, among other things, a mass of old papers, the contents of which were never known, or are not now remembered by affiant. Affiant further states that when he left Benicia in 1854, in the fall, that said trunk and box had been removed by some person to affiant unknown; that a short time after said Sanford left, said room

was occupied by clerks of the State treasurer, Major Roman, among whom were James Ewing, Mr. Phelan, and John Hays. The trunk and box was removed prior to the occupation of the said room by the aforesaid clerks; and this affiant does verily believe that all the papers and manuscripts contained in said trunk and box were lost.

J. P. WINSTON.

Subscribed and sworn to before me this 26th day of October, A. D. 1857.

In testimony whereof, I hereunto affix my seal of my said office of notary public of said county of Plumas and State of California.
[SEAL.]

JOHN D. GOODWIN,
Notary Public, Plumas county, California.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES,
Deputy Clerk

Affidavit of Vincente Gomez.

164 In the district court of the United States for the northern district of California.

INNOCENTIO ROMERO *et al.* }
vs. }
THE UNITED STATES.

SAN FRANCISCO COUNTY, ss:

Vincente Gomez being sworn, says that he was a clerk (escribiente) for Gov. Micheltorena, from the day he landed in Monterey, when he first came to California, till the day he left California; that he often saw the Romros in Monterey during the year 1844; that they were back and forth endeavoring to get a title to their ranch from Gov. Micheltorena; that he does not now recollect all the particulars of said application with refreshing his memory; but that certain parties connected with the governor, and having influence with him, interested themselves in behalf of the Romros, and obtained for them a final concession of their ranch in absolute property; that the ranch they obtained a grant for was in the vicinity of Monte Diablo, in the present county of Contra Costa, and was a sobrante of the ranches of Moraga, and Pacheco, and Welsh, and other neighbors; that he does not recollect to have seen the title papers at the time, but that he heard Micheltorena say that he had given a title to the Romeros for said ranch. That Micheltorena said so to witness himself.

VINCENTE PERF'CO GOMEZ.

Sworn and subscribed before me this 18th day of Nov. 1857.,

EDWARD BYRNE,
Notary Public.

Filed Nov. 20th, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Affidavit of Leandro Luco.

In the district court of the United States for the northern district of California.

INNOCENTIO ROMERO *et al.* }
 vs. }
THE UNITED STATES. }

NORTHERN DISTRICT OF CALIFORNIA :

Leandro Luco, of said district, being sworn, says that the Spanish language is his native language ; that he has read the petitions of John Burton, alcalde, in the expediente on file in the above cause, and also the deed from Romero to Garcia, dated Jan. 15, 1844, (probably 1847,) in the Spanish language ; that the language used
166 therein is very bad Spanish ; and that it both bad spelling
 and bad grammer, and such as no Mexican who understood his own language would use in writing any document. Deponent further says that he has read the translations into English, and that they are very bad, and do not express the meaning of the originals.

JOSE L. LUCO.

Sworn and subscribed before me this 24th day of Nov., 1857.

J. EDGAR GRYMES,
Deputy Cl'k.

Filed Nov. 24th, 1857,

By J. EDGAR GRYMES,
Deputy Cl'k.

Order for rehearing.

167 District court of the United States for the northern district of California.

THE UNITED STATES }
 vs. } No. 304 D. C. No. 654 L. C.
INNOCENTIO ROMERO *et al.* }

On motion of Innocentio Romero *et als.*, the appellants, by J. B. Crockett, esq., and after argument of counsel of both parties, it is ordered by the court that a rehearing be granted in this cause, and that the cause be replaced on the calendar for trial at the next term, with leave to both parties to introduce further evidence.

SAN FRANCISCO, *December 5*, 1857.

Filed Dec'r 5, 1857.

J. EDGAR GRYMES, *Deputy.*

Deposition of George B. Tingley.

169 United States district court, northern district of California.

INNOCENCIA ROMERO *et al.* }
 vs. }
 THE UNITED STATES. }

SAN FRANCISCO, *December 15th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came George B. Tingley, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present: W. F. L. Sloan, for the United States, and E. A. Lawrence, for claimants.

Question by claimants' counsel.

1st ques. What is your name, age, and place of residence?

1st ans. My name is George B. Tingley; 42 years old; and I reside in San Francisco.

2nd ques. Have you been before examined in this cause; if so, has your attention since that examination been called to the expediente on file in the surveyor general's office in this case?
 170 If so, state what further have you to state.

Ans. 2nd. I am the same person who has been examined before in this case. I stated in my former examination, and I now say, that I carefully examined the original title papers in said cause; that the same were a bundle of papers commencing with the original petition, the informe, &c., and ending with an absolute grant of the land. I have recently examined the Spanish documents, being seven in number, attached to the deposition of Pico before the land commission, now on file in the surveyor general's office, and I say they are not the papers I testified to in previous examination; those papers are not bound together, and they do not have the appearance of ever having been.

I was at the time of said trial perfectly familiar with Spanish grants; a large portion of my business at that time was connected with the examination of Spanish titles. I was sufficiently familiar with the Spanish language at that time to read and understand titles to land, and I know that the title of the Romeros was a concession in fee for the sobrante.

I further state that I examined the papers in the district court of Santa Clara county, between Domingo Peralta, Francisco Garcia, and Innocencio Romero, I being at the time one of the counsel

171 for one of the parties, and also examined the papers at the instance of Francisco Altoyo; also for a person by the name of John M. Jones. During the trial above alluded to the title papers of the Romeros, or what purported to be such, were in court during

the whole time, which cause lasted for 4 or 5 days. During said cause I had them in my hands at least forty times. They were interpreted to me by one Frank Godden, who, I have heard since, is dead. My recollection of the papers used there was four or six attached together in the usual form of Spanish grant, and that they contained a petition, an order for information---the information, I think, was signed by Pico, as alcalde---and a concession of the land, or sobrante, in the usual form, with, I think, a restriction that they should not interfere with the lands of the adjoining proprietors, which, I think, was signed by Micheltorena.

It was conceded on the trial, by Frederick H. Sandford and his associate counsel, that the land had been granted to the Romeros, but said that the grant was not valid, because it had been previously granted to Peralta. The genuineness of the titles on both sides were not controverted by either party. They were both admitted to be genuine titles. The whole dispute was about the boundaries.

172 The papers that I saw in the surveyor general's office did not seemed to have been attached together in the same way that the papers were that I examined in court, and certainly did not contain a final grant or concession of the land, as was the case with those examined in court, as alluded to before. I cannot say that I recognized the papers as those I saw in court.

Cross-examination.

Ques. 1st. Do you remember to have observed in that expediente, as used in the trial at San José, whether it contained a decree of concession as distinct as is usually called the titulo.

Ans. 1st. It is my recollection that there was a decree of concession. I mean by that the grant of the land by the governor, or final title, as interpreted to me, read, as nearly as I can remember, as this: "That inasmuch as the petitioners have prayed for a grant of land as described in their petition, I have thought proper to concede the same to them for the benefit of themselves and their families." In addition to this, my impression is that there was a restriction that the grant should not infringe on the property of the adjoining owners; likewise that they should perform certain regulations required of them in regard to improving and occupying the land.

173 Ques. 2nd. Do you remember who produced those documents in the court of San José on the trial?

Ans. 2nd. I think that it was produced either by the Romeros or the Garcias. They were sent for, and brought by Garcia or Romero.

Ques. 3. Do you remember whether there was a written translation used on the trial, or did some one simply translate them verbally on the trial?

Ans. 3rd. They were translated verbally on the trial by Godden, I believe. Each party had his interpreter, and they concurred in the correctness of the translation.

Direct resumed.

Ques. 4th. Did you ever examined the Romero title papers in connection with other attorney's? If so, was any objection raised to the title; if so, what was it?

(Question objected to as new matter ; and further, on the ground that it is not competent to examine the witness touching the opinion of other parties.)

Ans. 5. I did in connection with Joshua Redmond, and, I believe, James M. Jones, who had the reputation of being one of the best Spanish scholars at that time in California.

Ques. 6. Had it the approval of the departmental assembly?

Ans. 6. It had not.

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(Signed)

GEO. B. TINGLEY.

Sworn and subscribed before me this 15th day of December, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed : Filed Dec'r 26th, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Deposition of Vicente P. Gomez.

United States district court, northern district of California.

INNOCENCIO ROMERO *et al.* }
vs. }
THE UNITED STATES. }

SAN FRANCISCO, *December 15th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dist court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c, came Vicente P. Gomez, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of said board
175 of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by John Argus, a sworn interpreter.

Present : W. F. L. Sloan, for the United States, and E. A. Lawrence, for claimants.

Question by claimants' counsel.

1st ques. What is your name, age, and place of residence?

1st ans. My name is Vicente P. Gomez ; 34 years old ; and I reside in Monterey.

2nd ques. What office did you occupy under the former government, and how long did you occupy it?

2nd ans. I was a clerk in the secretary's office and was clerk in the treasury department. I was employed from the time of the arrival of Micheltorena until the time this country was taken by the Americans.

3rd ques. Are you acquainted with the Romeros? If so, state what you know in regard to their petitioning for a grant of lands in Contra Costa county.

3rd ans. I was acquainted with the Romeros. Mariano Romero was the overseer of my father's rancho. I know that Innocencio, José, and Mariano Romero solicited or petitioned the governor, Michel-
torena, for a grant of land in what is now called the Contra
176 Costa. I mean by grant of land a sobrante. The grant I did
not see, but I knew afterwards that it was issued, and I now
know, through Mr. Lawrence, that the title or grant to which I refer
has been lost. I saw about two weeks ago the petition at the surveyor
general's office, and it is the same one that I refer to.

4th ques. Were the papers that you saw in the surveyor's office the
whole of the papers, or was there in addition to that a copy of a grant
or an order for the grant?

4th ans. There is wanting the order of "espidase el titulo," or that
the title issue. I saw the papers in a hurry, and I cannot say exactly
what other document was wanted besides the one I have mentioned.

5th ques. You stated that you knew that the title was issued. State
the means of your knowledge?

5th ans. Because I used to take a note of the title that issued in the
"Toma de Razon."

6th ques. Did you take a note of this title?

6th ans. I do not remember distinctly, but I ought to have taken it.

7th ques. Did Micheltorena state to you that or not he had issued
a title to the Romeros?

(Ques. objected to as leading.)

7th ans. That once a Romero solicited a grant of land from Michel-
torena, and I heard the governor ask if it was the same
177 Romero to whom he had already granted lands.

8th ques. What Romero was this who applied?

8th ans. This Romero was from Colineló; he was not related to
the Romeros, the claimants in this cause.

Cross-examination.

9th ques. You say you now know that the grant has been lost
through Mr. Lawrence. Do you not mean to say only that you are in-
formed by him that the title is lost?

9th ans. I mean that I was informed.

10th ques. You also say that you know the title issued to the Ro-
meros in this case, and yet you say you never saw it. Do you not
mean to say simply that you were informed that it had been issued?

10th ans. I do not mean "simply," as I was employed in the sec-
retary's office, and I know that it was issued because I think I took
the "tomada razon."

11th ques. How can you know it unless you saw it?

11th ans. I know it because in the secretary's office everybody
knew what took place, because there was so little to do.

12th ques. Was the "toma de razon" written by order of the
governor, or did the clerk make it of his own notion?

12th ans. It was done by order of the governor, according to the
custom of the government and by the laws of the colonization.

178 13th ques. At what time was the "toma de razon" made?

13th ans. After the concession was made.

(Signed) VICENTE PERF' TO GOMEZ.

Sworn to and subscribed before me this 15th day of December, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Dec'r 26th, 1857.

J. EDGAR GRYMES, *Deputy Clerk.*

Deposition of Francisco Arce.

United States district court, northern district of California.

INNOCENCIO ROMERO *et al.*, }
vs. }
THE UNITED STATES. }

SAN FRANCISCO, *December 12th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee, appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Francisco Arce, a witness produced on behalf 179 of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by John Hargons, a sworn interpreter.

Present: E. A. Lawrence, esq'r, for claimants, and E. W. F. Sloan, esq., for the United States.

Question by

1st ques. What is your name, age, and place of residence?

1st ans. My name is Francisco Arce; 35 years; and I reside in Monterey county.

2nd ques. What offices have you held under the former government of California?

2nd ans. I was first officer of the secretary under the former government, secretary interim of the same office. I held these offices during the years from April, 1839, until February, 1845.

3rd ques. Are you acquainted with the Romeros, claimants in this ase, and when did you first become acquainted with them?

3rd ans. I know them, and first became acquainted with them in 1835 or 1836.

Ques. 4. Do you know of the Romeros petitioning for a grant of lands in Contra Costa county during the years 1843 or 1844?

180 Ans. 4. I remember that the Romeros were recommended to me for the petition of the land they asked for. I myself made the petition out.

Ques. 5. Have you seen the original Spanish papers on file in surveyor's office in this case, and in whose handwriting are they?

Ans. 5. Yes, I have seen them, and they are in my handwriting; I mean the petition and the informe.

Ques. 6. Are the signatures of Jimeno and Micheltorena appearing

upon those documents, their genuine signatures, and are you acquainted with their genuine signatures?

Ans. 6. Yes, sir; I am acquainted with the handwriting of Jimeno and Micheltorena, and their signatures on those documents are genuine.

Ques. 7. What action was had by the governor on the Romero's petition?

Ans. 7. The governor submitted the petition to the information of the secretary, alcalde, &c.

Ques. 8. What was further done by the governor upon these "*informes*?"

Ans. 8. He decreed and ordered the title to be made.

Ques. 9. Do you recollect if the title was made out, and if so by whom?

Ans. 9. I remember that the title was ordered to be made out by the governor, and was done by one of the clerks of the office. I do not remember whether it was Don Tomas Soberanes or Don Pedro Estrada who wrote it out.

Ques. 10. Did you see the grant, and was it delivered to the Romeros; if so by whom?

(Question objected to as leading.)

Ans. 10. I saw the title; it was signed by the governor and secretary, and it was delivered by me to Innocencio Romero.

Ques. 11. Do you recollect the contents of the grant? If so, state what they were.

(Question objected to on the ground that no foundation had been laid for parol evidence of the contents of the grant.)

Ans. 11. I recollect that the grant was made to the Romeros, as I have above stated, granting the sobrante of land in Contra Costa county, situated between the ranchos of Moraga, Pacheco, and Welch. The grant was made subject to the sobrante alone. I mean that the ranch embraced all the sobrante of those ranchos.

The petitioner was asked by the officials how many leagues he calculated the sobrante to be, and he answered that he had never surveyed it, but he thought that it contained four or five leagues.

Ques. 12th. In what form was the grant?

(Question objected to.)

Ans. 12th. It was in the usual legal form as all the others.

Ques. 13th. Were you familiar with the customary form of the grants?

Ans. 13th. Yes; I was.

182 Ques. 14th. How did you become so?

Ans. 14. Because I was employed, and it was my duty as an official.

Ques. 15. Do you know the date of this grant?

Ans. 15. I do not remember exactly: the title was drawn in 1844.

Ques. 16. Who were the grantees named in that title?

Ans. 16. Innocencio, José, and Mariano Romero—three brothers.

Ques. 17. By whom was the grant signed?

Ans. 17. By Micheltorena and Jimeno, sec'y.

Ques. 18. Were the signatures of Micheltorena and Jimeno to that grant genuine?

Ans. 18. They are genuine.

Ques. 19. Can you state whether that grant was made before or after the report of Manuel Jimeno, dated 23rd of March, 1844, and the order of Micheltorena of the same date, which appear in the expediente, and are now exhibited to you?

Ans. 19. I remember, that after the date of this order, "March 23rd, 1844," that there was an agreement made between Soto and the petitioner, and the government gave the order that a title should be made in consequence of the agreement which they had made. The grant was made after this report and order dated March 23rd, 1844.

183 Ques. 20. Was the grant made before or after the agreement you speak of between the Romeros and Soto?

Ans. 20. After.

Ques. 21. Was that agreement between Soto and the Romeros in writing or verbal?

Ans. 21. Verbal, in the presence of the governor and the secretary.

Ques. 22. What Soto was it that you speak of?

Ans. 22. I refer to Francisco Soto, *alias* Cabo.

Ques. 23. Is Francisco Soto now living or dead?

Ans. 23. He is dead.

Ques. 24. When did he die?

Ans. 24. I do not remember.

Ques. 25. After this grant to the Romeros was made, what was done with it?

Ans. 25. It was delivered to the petitioner.

Ques. 26. Was this grant to the Romeros, that you say was in the ordinary form, a mere provisional or conditional concession, or was it a complete and absolute concession in ownership?

(Question objected to as leading.)

Ans. 26. It was a complete concession in good and legal terms.

Ques. 27. Have you ever seen that the grant since you delivered it to the Romeros?

Ans. 27. No, sir.

Ques. 28. Do you know where it is now?

Ans. 28. No, sir.

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Cross-examination.

Ques. 29. Where were you when you drafted the petition for the grant of the land for the Romeros?

Ans. 29. In Monterey.

Ques. 30. At whose request did you draft it?

Ans. 30. At the request of Innocencio Romero, who was recommended to him by some friends.

Ques. 31. Who were the friends you allude to?

Ans. 31. Antonio Chavis—I do not remember the names of the others.

Ques. 32. Where did Chavis then live?

Ans. 32. In Monterey.

Ques. 33. To whom did you hand the draft of the petition when you completed it?

Ans. 33. To the petitioner.

Ques. 34. When did you next see it?

Ans. 34. I saw it several times at that time, and now lately I have seen it in the archives. I do not remember exactly when it was, but it was while the expediente was being formed.

Ques. 35. Where was it when you next saw it—in whose possession?

Ans. 35. I do not remember whether it was in my possession or the secretary's.

Ques. 36. Do you remember the order entered on the margin of the petition, dated the 18th of January, 1844?

Ans. 36. Yes, sir.

185 Ques. 37. Who wrote that order?

Ans. 37. It was written by Governor Micheltorena.

Ques. 38. Were you present when the order was written, or do you speak from your knowledge of his handwriting?

Ans. 38. I do not know whether I was present. I infer from the handwriting.

Ques. 39. Do you remember the report made by Manuel Jimeno, in obedience to said marginal order?

Ans. 39. I do not recollect. But I recollect it was asking information from the authorities.

Ques. 40. Do you remember the communication signed by Manuel Jimeno, in which he states the *the* governor decrees that the 1st alcalde of the town of San José report upon the petition?

Ans. 40. I remember that in the expediente there is a "informe" asked by the secretary, Man'l Jimeno, from the judge of San José.

Ques. 41. In whose handwriting is it?

Ans. 41. I do not remember in whose handwriting it is, but I think it was in mine.

Ques. 42. Do you speak from your present recollection of what occurred at that time, or from the knowledge of the handwriting you have recently seen in the expediente?

186 Ans. 42. I remember both ways on account of what occurred at the time, and from what I recollect from the expediente.

Ques. 43. Was there any report made by the judge of San José pursuant to that request? And if so, by whom?

(Question objected to on the ground that if there was any such report it must have been in writing: the writing must be produced or its absence accounted for.)

Ans. 43. It was done by the judge or alcalde at that time, who, according to my recollection, was Antonio Maria Pico.

Ques. 44. Do you remember when that report was received in Monterey?

Ans. 44. I do not remember.

Ques. 45. Have you any knowledge that it was ever received there except from the circumstance that you saw it in the expediente at that place?

Ans. 45. It was received in Monterey. I remember, by many circumstances at that time, that I saw it, and that I had it in my own hands.

Ques. 46. What did the governer first do in reference to the petition after receiving that report?

Ans. 46. He passed it over to the secretary.

Ques. 47. What did the secretary do with it?

Ans. 47. The secretary gave time for the Romeros and Soto
187 to have an agreement, in order to see whether they could settle the question.

Ques. 48. Did he make an order to that effect in writing, or was it merely verbal?

Ans. 48. He gave me the order verbally.

Ques. 49. Did you write it?

Ans. 49. I do not recollect.

Ques. 50. Who was present at the time that Jimeno gave you that verbal order?

Ans. 50. I do not remember.

Ques. 51. Did you ever communicate that order to any one; if so, to whom, and when?

Ans. 51. I remember having spoken with the petitioner, stating to him that he required time for the agreement. I do not exactly remember the date, but it was one of those dates. I do not know whether it was in the first report or the one before the last.

Ques. 52. Where was it that you communicated that to the petitioner?

Ans. 52. In Monterey.

Ques. 53. How long after that was it before the governor decreed the grant to be made?

Ans. 53. I do not remember.

Ques. 54. Was 1, 2, 3, 4, 5, 6, 7, or 8 months?

Ans. 54. It might have been during that period, but I do not recollect when?

Ques. 55. Do you remember what season of the year was it?

Ans. 55. I do not recollect whether it was in spring, winter,
188 summer, or fall of the year.

Ques. 56. Do you remember whether it was in the year 1844, or 1845?

Ans. 56. I recollect that it was in 1844?

Ques. 57. From what circumstance do you recollect that it was in 1844?

Ans. 57. At that time, in 1844, I was contented, happy, and satisfied, and that is the reason that I recollect it.

Ques. 58. Did that happy state of contentment continue during the entire year of 1844?

(Question objected to as irrelevant.)

Ans. 58. I had different epochs at that time, but I believe I enjoyed it the whole year.

Ques. 59. Were you personally present when Francisco Soto and the petitioner announced to the governor that they had come to an agreement?

Ans. 59. Yes.

Ques. 60. When and where did that take place?

Ans. 60. This took place some days after that in the private

residence of the governor. They had an agreement made between Soto and the petitioner. I do not recollect in what month it was, whether July, August, September, or October, 1844. They came backwards and forwards several times before the agreement was made.

Ques. 61. Please name all the parties that were present before the governor at that time.

189 Ans. 61. The parties, Soto, Innocentio, Romero, Jimeno, sec'y, and myself; I do not remember the others.

Ques. 62. Was there no note of that agreement written down by any of those officials on that occasion?

Ans. 62. I do not remember whether there was anything written, but I only recollect the verbal agreement in which Soto desisted from his claim.

Ques. 63. To what extent did Soto desist or yield his claim?

Ans. 63. The claim of Soto was nothing but a mere superficial claim of little value, in consequence, according to my way of thinking, that there was no demand or representation on the Soto's part to obtain the right of the land. Soto yielded his claim and the governor ordered that the title should be issued.

Ques. 64. At what time did the governor order that?

Ans. 64. I do not recollect.

Ques. 65. Did he make it on the same day that Soto yielded his claim, or on a subsequent day?

Ans. 65. I do not remember.

Ques. 66. Were you present when the governor made that order?

Ans. 66. I do not remember.

Ques. 67. When did you first see that order, and where?

(Question objected to on the ground that it assumes that the
190 order was made in writing.)

Ans. 67. I have said several times before that it was made at the governor's; the time and date I do not remember.

Ques. 68. When and where did you first see the order which you have said the governor made directing a title to be given?

(Question objected to on the same ground as the last.)

Ans. 68. With respect to that, I do not recollect; the order was received by the secretary, given by the governor.

Ques. 69. How do you know that the governor made the order and that the secretary received it?

Ans. 69. Because I knew afterwards that the governor had given it, and that the secretary never did anything except with special orders from the governor. The secretary gave me the order to draw the title; it was done so; it was signed by the governor and the secretary, and delivered to the petitioner.

Ques. 70. Was the title then drawn by you and in your handwriting?

Ans. 70. I have already said that it was in the handwriting of one of the officials; it was not written by me.

Ques. 71. Did you see it written?

Ans. 71. Yes.

Ques. 72. Name the clerk who wrote it?

Ans. 72. I do not remember; I have already said that it was

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191 either Tomas Soberanes or Pedro Estrada, but I do not recollect which of the two.

Ques. 73. In whose office was it written?

Ans. 73. In the government office; in the office of dispatch.

Ques. 74. Did you see the governor sign it?

Ans. 74. Yes, sir.

Ques. 75. Did you see Jimeno, the secretary, sign it?

Ans. 75. Yes, sir.

Ques. 76. Did you see it delivered?

Ans. 76. Yes.

Ques. 77. Was all that done on the same day?

Ans. 77. I do not remember, but I think not, for I was busy in those days in the sec'y's office.

Ques. 78. Was there a copy of that grant attached to the expediente?

Ans. 78. I do not remember.

Ques. 79. Was the order of the governor, directing the title to issue, ever reduced to writing and attached to the expediente?

Ans. 79. I think so.

Ques. 80. Do you think so because you remember that it was so, or have you no recollection about it?

Ans. 80. I cannot recollect so many things; I am no encyclopedia, and my head does not contain all the events that happened 15 or 20 years ago; but I think that it was attached to the expediente.

Ques. 81. You state in your direct examination that you have recently examined the expediente on file in this case in the
192 office of the surveyor general; state whether it is the same expediente which you first saw in the archives at Monterey?

Ans. 81. Yes, sir; it is the same expediente.

Ques. 82. Was it not customary for the governor, when he thought to accede to a petition for land to enter a decree of concession, or cause it to be done, usually commencing with the words "vista la petition;" and if so, state whether such a decree was entered in this case?

Ans. 82. In these cases the secretary was responsible, and he was the person to do it or not, and that this circumstance exist in some expediente and not in others. It was done so in some cases and in some cases it was not, according to circumstances, as the governor had the power and he acted or not as he pleased.

Ques. 83. Do you mean to say that the instances of omitting to enter that decree was so numerous as to preclude you from saying that there was no general custom on the subject?

Ans. 83. Sometimes it was omitted by the clerks, sometimes by the secretary, and the governor did just as he pleased. It was not considered necessary.

Ques. 84. Was there any "vista la peticion" or decree of concession made in writing in this case?

Ans. 84. I do not recollect; I believe not.

Ques. 85. Was it customary while you occupied the offices
193 you have mentioned in your direct examination to retain in the expediente copy of the titulo issued by the governor?

Ans. 85. Yes, sir; it was customary.

Ques. 86. Was there any copy retained in this case?

Ans. 86. I do not remember.

Ques. 87. Did Francisco Soto return from Monterey in company with Innocencio Romero at the time he got the grant?

Ans. 87. He returned, but I do not remember if they went together.

Ques. 88. Where did Soto live at that time?

Ans. 88. He lived in the district of San José. I cannot state exactly where he lived—somewhere in San José, on his ranch.

Ques. 89. Do you know whether the ranch on which he sometimes lived at that time was the same tract of land which you say the governor granted to the Romeros?

Ans. 89. I believe not.

Ques. 90. When you speak of Soto living on his ranch what ranch do you refer to?

Ans. 90. I refer to the San Lorenzo ranch, the property of his widow

Ques. 91. Do you know the extent of the San Lorenzo ranch?

Ans. 91. I do not remember.

Ques. 92. Was the ranch which you say was granted to the Romeros called by a particular name; if so, state the name.

Ans. 92. I do not remember.

194 Ques. 93. Do you know whether it is identical with the ranch which you have just called San Lorenzo?

Ans. 93. No, sir.

Ques. 94. What ranch was it which you say Francisco Soto yielded his claim to in favor of the Romeros?

Ans. 94. I refer to the sobrante lying between the Morega, Pacheco, and Welch.

Ques. 95. Was there any recital in the titulo which you say the governor gave to the Romeros of the agreement between them and Soto, by which the latter yielded up his claim to the sobrante?

Ans. 95. I do not remember.

Ques. 96. How can you remember that the titulo was in the usual form if you cannot remember that circumstance?

Ans. 96. Some things I recollect, others I do not. I had the title in my hands, and read that the title was in the sobrante.

Ques. 97. Repeat the language of the grant, if you can, descriptive of the boundaries of the land granted?

Ans. 97. I remember that they asked for the sobrante between the ranchos of Morega, Welch, and Pacheco. I am not able to give the boundaries, because I do not remember them.

Ques. 98. Where did Innocencio Romero live during the years 1853 and 1854?

98th ans. I do not know.

Ques. 99. When did you see him last?

195 Ans. 99. I do not remember the date.

Ques. 100. How many of the following persons, and which of them, do you, and how long have you known them, to wit: Francisco Altoyo, Alvin C. Campbell, Jas. W. Thompson, William H. Mitchell, John M. Jones, C. Yeager, Miguel Garcia, and José Romero?

Ans. 100. I know Campbell, Garcia, and José Romero. I know Campbell since 1851, José Romero since the year 1836 or 1837; Miguel Garcia since 1844 or 1844.

Ques. 101. Has either one of those men, at any time since 1852, asked you any questions touching your knowledge of the matters testified by you?

Ans. 101. I do not remember.

Ques. 102. Has Innocencio Romero done so at any time since 1852?

Ans. 102. I do not remember.

Ques. 103. Who spoke to you concerning your knowledge of this case, and when?

Ans. 103. In the first place Mr. E. A. Lawrence, Mr. Smith, Mr. Tice. Mr. Tice about a month; Mr. Smith longer, both of whom are present.

Ques. 104. What did Mr. Smith or Mr. Tice tell you about it?

Ans. 104. These gentlemen begged to come forward and say what was true and just about the case, that I knew.

Ques. 105. How did they ascertain that you knew anything about it?

196 Ans. 105. I do not know.

Ques. 106. Where were you when they made that application?

Ans. 106. Mr. Tice met me in the street, and I was introduced to him by Mr. Lawrence.

Ques. 107. Did you then tell them that you knew anything about it?

Ans. 107. They asked me, and I said that I knew something about it.

Ques. 108. How long before that was it that you met Mr. Lawrence?

Ans. 108. Mr. Lawrence wrote me a letter over a month ago, wishing me to come down here for the purpose of serving him in this case, for he knew that he was acquainted with, and he wished him to state what was true and correct in the matter according to his knowledge.

Ques. 109. Did you ever communicate with Mr. Lawrence before receiving this letter in any way?

Ans. 109. No, sir.

Ques. 110. Were you in company with Mr. Lawrence in the office of the surveyor general about two months ago, looking at the expediente you have mentioned, and conversing with him about this claim?

Ans. 110. Yes, sir.

Ques. 111. Did Mr. Lawrence at that time state to you that any of the title papers had been lost?

Ans. 111. I do not remember.

197 Ques. 112. Has any one at any time stated to you that some of the title papers had been lost?

Ans. 112. I do not remember.

Direct resumed.

Ques. 113. Had you received the letter from Mr. Lawrence before or after you was with him in the office of the surveyor general?

Ans. 113. I received the letter previously.

Ques. 114. You have been questioned on the cross-examination about the handwriting on the expediente in this case. Was the original expediente before you when you answered, or did you answer from the recollection of it?

Ans. 114. It is from memory.

Ques. 115. After the Americans took possession of California, were the archives at Monterey kept with much care?

Ans. 116. I believe not.

Ques. 117. Do you know whether any original papers belonging to the archives and relating to land titled have been lost?

Ans. 117. I know that great many documents have been mislaid.

Ques. 118. Who was the owner of the San Lorenzo ranch—to whom was it granted?

Ans. 118. William Castro and Francisco Soto.

(Signed)

FRAN'CO. ARCE.

Sworn to and subscribed before me this 12th day of December, 1857.

J. EDGAR GRYMES,

Special Com'r.

198 Endorsed: Filed Dec'r 26, 1857.

J. EDGAR GRYMES,

Deputy Clerk.

Deposition of Charles B. Strode.

United States district court, northern district of California.

INNOCENCIO ROMERO *et al.* }
vs. }
THE UNITED STATES. }

SAN FRANCISCO, *December 17th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Charles B. Strode, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: E. A. Lawrence, esq'r., for the claimants; U. S.
199 att'y, and E. W. F. Sloan, esq'r., for the United States.

Questions by E. A. Lawrence, esq'r.

Ques. 1. What is your name, age, and place of residence?

Ans. My name is Charles B. Strode; 40 years old, and I reside in Oakland, Contra Costa county.

Ques. 2. How long have you been a practicing attorney in this city, and what has been your principal business?

Ans Since the last of November, 1850, the prosecution of Mexican

and Spanish land claims before the U. S. land commission, and in some cases before the U. S. courts, in connection first with Wm. Carey Jones, afterwards with P. W. Tompkins, of the firm of Jones, Tompkins & Strode, and since by myself.

Ques. 3. Have you ever seen the title papers of the Romeros to lands in Contra Costa county? If so, state when and where and under what circumstances, and what you know about them.

Ans. I have seen what I supposed were the title papers. In the last of 1850 or the first of 1851 I became acquainted in the
200 city of San José with Mr. Sanford, who was a lawyer. In 1851 or 1852, my mind not being distinct, I met with Mr. Sanford in Benecia. I found him to be deranged, as I thought, certainly very flighty, in consequence of domestic troubles. He had been to my house, in this city, and I had afforded small pecuniary means. He took me to his office, in Benecia, and told me he had the Romero grant in his possession. I know the situation of the land by general description and by having been often on it. The paper that I saw was for a grant of a sobrante. I was the lawyer of several of the colidantes and expected to be that of others, which made me feel an interest in the examination of this paper. At that time I had learned to read the Spanish language, although very imperfectly, and both for convenience and certainty always used an interpreter. I had become very familiar with the appearance of Spanish and Mexican grants, and knew, as far as I could know by comparison with others, the handwriting of Jimeno and Micheltoreno, and could not, I think, have been deceived as to their genuineness of their signatures, altho' I never saw either of them write. I know that the signature of Micheltorena was to the papers, and I believe also that of Jimeno. I have examined the papers in this case, now on file in the surveyor general's office. They are not the papers shown me by

Mr. Sanford. My interpreter, who, I believe, was Gutierrez,
201 said now to be in Cuba, read the papers carefully to me. They consisted of a good many papers sewn together on the back. It purported to be a full grant for land lying between the claims of Moraga, Welch, Pacheco and others, and was for a sobrante described to be of four or five leagues—I believe five—and was a grant in full title given to two or three brothers named Romero. This paper was offered me by Mr. Sanford, who told me he had gotten them in San José on a trial of ejectment in a suit between one of the Peraltas and a purchaser under the Romeros. He told me that he did not believe that the parties in interest knew where the papers were; that he, Sanford, intended to go to his family in Georgia, and that he was willing to give me the papers to see what I could do with them for him and myself. This I refused to do and left the papers in his office, in either a chest or a trunk. Afterwards Sanford left this State for the Atlantic States, and I have since heard that he is dead. Some months after this, and on the land that it purported to grant, I met with a gentleman who was a purchaser under that grant, named Yager, and told him where I had seen those papers. Sanford, at that time, as we understood, was in the mines. Yager informed me that he would start in a few days to find Sanford. I do not know, of my own

202 knowledge, whether he saw him or not. From every appearance Sanford was in great pecuniary embarrassment. Having learned that all his furniture, including the trunk or chest in which I saw the papers, had been attached and sold for debt, I went to Benecia, at the request of the parties in interest, and made a diligent search for them, and although I heard from others where the trunk or chest had been seen after the departure of Sanford, I was unable to find where they are at present. I do not know where those papers are, and except from the statements of Sanford and other lawyers who were engaged in the ejectment suit in San José, how he ever got possession of them. Before the departure of Mr. Sanford he told me that he had left them in the same place where I had seen them.

Cross-examination.

Ques. 4. State as nearly as you can from memory the respective documents of which the supposed title papers consisted, and which you saw in Mr. Sanford's possession.

Ans. They consisted of a petition signed by the applicants, of a marginal decree by the governor, with the usual informe, with the report of the secretary, I believe, with a rude map. I have
302 seen a map, and I think that was the time, connected with those papers, and a final decree or concession, and do not remember that the same differed from the usual form of making grants in property. I believe it had the ordinary conditions, and was dated, as well as I can remember, in 1844.

There was no peculiarity that now strikes my mind about those papers. What I mean by decree of concession is that document usually commencing with "vista la peticion" and followed by a grant in form.

(Signed)

C. B. STRODE.

Sworn to and subscribed before me this 17th day of December, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed : Filed Dec'r 26th, 1857.

J. EDGAR GRYMES, *Deputy.*

Deposition of Inocencio Romero.

204 United States district court, northern district of California.

INOCENCIO ROMERO *et al.* }
vs. }
THE UNITED STATES. }

SAN FRANCISCO, *December 18th, 1857.*

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Inocencio Romero, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of com-

missioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by John Argas, a sworn interpreter.

Present: E. A. Lawrence, esq., for claimants; E. W. F. Sloan for the United States.

Questions by claimants' counsel.

205 Ques. 1. What is your name, age, and place of residence?
Ans. My name is Inocencio Romero; 52 years; and my place of residence is beyond San Francisco.

Ques. 2. Are you the same person who has been heretofore examined in this case?

Ans. Yes, sir.

Ques. 3. Do you recollect of Soto petitioning for the same land as yourself; if so, was the difference between you and him settled before you obtained your grant, and how was it settled?

(Question is objected to as leading, all except the last four words.)

Ans. I recollect that Soto made a petition for the same land as I did. The difference was settled before I obtained my grant. Soto and myself were called in the presence of Micheltorena, and as Soto was already in possession of the rancho San Lorenzo, and as he had petitioned also for the Juntas, Micheltorena told him that he should have the San Lorenzo, and in that case he would grant the Juntas to the Romeros, and this was the way the difference was settled, both being satisfied with the governor's decision.

Ques. 4. Did you ever petitioned John Burton, alcalde at San José, for a grant of this ranch after the Americans came to this country?

Ans. No, sir.

206 Ques. 5. Did you ever petition John Burton, the alcalde in San José, for a survey of the land, in order that it might be granted to you; if nay, what did you petition for?

(Question objected to.)

Ans. No, sir; I did not petition Burton for a survey of the land, because the land had already been granted to me by Micheltorena. I petitioned Burton to settle the difficulty with Domingo Peralta about boundaries.

Cross-examination.

Ques. 6. Was your petition to Burton, the alcalde, in writing?

Ans. It was in writing.

(The counsel for the U. S. objects to all what the witness testified concerning what he said about petitioning Burton, as the paper would speak for itself.)

Ques. 7. Are you interested, directly or indirectly, in this claim?

Ans. No, sir.

Ques. 8. Are you not one of the claimants in this case?

Ans. Yes, sir.

207 Ques. 9. Were you not interested then when the claim was presented to the board of commissioners?

Ans. Yes, sir, at the beginning I had an interest, but I sold my interest 3 years ago.

Ques. 10. You testified in your former deposition that you handed your title papers to a lawyer who was an American, by the name of Tingley or Hinckley, to present the same for confirmation; did you ever see them afterwards?

Ans. I never saw the papers afterwards.

Ques. 11. Were you present in San José at the trial of a cause in which Domingo Peralta was on one side and yourself and Garcia on the other, in reference to this tract of land or a part of it?

Ans. I was not there myself. I was at that time sick, and as Garcia was in partnership with me he went.

Ques. 12. Was it before or after that trial that you handed your title papers to Tingley?

Ans. It appears to me that it was before.

208 Ques. 13. What did the title papers so handed to Tingley consist of?

Ans. The papers I gave him consisted of the title papers pertaining to the grant given to me by the governor.

Ques. 14. What title papers were given to you by the governor?

Ans. After I made the petition I got the title papers with all the different papers usually issued at the government office. I cannot describe the number of papers.

Ques. 15. Were there several papers; if so, how many?

Ans. There were several papers, such as the map, petition, informe, and decrees.

Ques. 16. Did Soto go with you to Monterey at the time you got your papers?

Ans. We did not go together. Soto went on his own business and I went on mine.

Ques. 17. Did you and Soto come away together from Monterey?

Ans. No, sir.

Ques. 18. Where did Soto live at that time?

Ans. At San Lorenzo.

209 Ques. 19. How long after you had presented your petition was it that Romero and Soto were ordered before the governor, as mentioned by you in your direct examination?

Ans. I do not recollect, but it was soon afterwards; perhaps some months afterwards.

Ques. 20. In what month was it that you say you obtained that grant? State the time as nearly as possible.

Ans. I cannot say exactly, but I think it was in March.

Direct examination resumed.

Ques. 21. Was it before or after the governor ordered you and Soto before him that the grant was made?

Ans. It was after.

Ques. 22. Can you and your brothers either read or write?

Ans. No.

Ques. 23. Did you hand the title papers to Tingley in person or did you send them to him? If so, by whom?

210 Ans. I was sick at the time and sent them to him by negro Garcia. The papers were loose, without being sewn together. I do not know whether the lawyer sewed the papers together or not.

INOCENCIO ^{his} + ROMERO.
rubric.

Sworn to and subscribed his rubric this 18th day of December, A. D. 1857, before me,

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Dec'r 26th, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Deposition of José Antonio Chavis.

United States district court, northern district of California.

INOCENCIO ROMERO *et al.* }
vs. }
THE UNITED STATES. }

SAN FRANCISCO, *December 14th*, 1857.

On this day, before J. Edgar Grymes, a special commissioner
211 and referee appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Antonio Chavis, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by John Argas, a sworn interpreter:

Present: W. F. L. Sloan, esq., for the United States, and E. A. Lawrence for claimants.

Questions by claimants' counsel.

Ques. 1. What is your name, age, and place of residence?

Ans. My name is José Antonio Chavis; 36 years old, and I reside on the frontier of lower California.

Ques. 2. Did you hold any office under Micheltorena; if so, what, and during what period?

Ans. I was secretary of the ayuntamiento in 1844.

Ques. 3. Were you acquainted with Inocencio, José, and Ma-
212 riano Romero during that time, and do you know of their applying for a grant; if so, what occurred?

Ans. I know them; I know that they made an application for a grant; I was intimately acquainted with the Romeros; Inocencio came and called at my house to request me to assist him in his case,

and then I went myself to the office of the government, where Francisco Arce was acting there as "official primero," and I recommended him to said Arce in the presence of Romero, in order that Arce should assist Romero in carrying his petition through.

Some time afterwards Romero came to my house to thank me for the favor I had conferred on him, showing me at the same time the title of the land which he had petitioned for, which grant I looked over and told him it was perfectly good.

Ques. 4. State the form, date and contents of the grant, and by whom signed.

Ans. The grant was signed by Gen'l Micheltorena as governor; I do not recollect the date; Jimeno, acting as secretary, signed it. The land granted is situated in Contra Costa; it was for all the sobrante lying between the ranchos of Moraga, Pacheco, Welch, and others whose names I do not recollect. I heard Mr. Romero say that
213 it would contain four or five leagues. I do not remember exactly the form of the title, it being so long ago since I saw it, but I remember the substance of it as above stated.

Ques. 5. Were you acquainted with the signatures of Micheltorena and Jimeno, and were their signatures genuine to that title?

Ans. I was acquainted with their signatures, and they were genuine.

Ques. 6. Was it an absolute grant, or a provisional grant?

Ans. It was an absolute grant.

Ques. 7. Was it in the usual form, or a marginal decree?

Ans. In the usual form.

Ques. 8. What year was it dated?

Ans. In 1844.

Cross-examination.

Ques. 9. Of what "ayuntamiento" were you secretary?

Ans. Of Monterey.

214 Ques. 10. Did your office of secretary of the ayuntamiento make you familiar with the proceedings of the territorial government?

Ans. No, sir.

Ques. 11. Did you ever see the expediente in this case either in Monterey or in the office of the surveyor general?

Ans. I saw it here in this office—I mean a copy; I saw the original in Monterey in 1844.

Ques. 12. Did you see it there before or after the issuing of the titulo, as above mentioned?

Ans. After.

Ques. 13. Did you examine it with sufficient care to enable you to recognize the document you saw in this room as a copy?

Ans. Yes, sir.

Ques. 14. Please describe, step by step, the documents of which it was composed.

Ans. I cannot exactly tell one by one the documents which composed the expediente; it began first with the petition, and then fol-

lowing the different "informes" of the alcalde from there to the secretary, and from the secretary to the governor, and to the grant.

215 Ques. 15. Can you remember how often it was referred to the alcalde for information?

Ans. No, sir.

Ques. 16. Do you remember the report of the alcalde made upon the first reference?

(Objected to as seeking to prove by parol the contents of a written instrument.)

Ans. I do remember; but I suppose it must have been favorable to Romero, as the title was afterwards granted.

Ques. 17. Did that expediente contain a decree of concession or order directing a "titulo" to issue?

Ans. 17. Yes, sir.

Ques. 18. Did the expediente contain a copy of the grant?

Ans. Yes, sir.

Ques. 19. You say in your direct examination that Inocencio Romero exhibited to you his titulo after he obtained it; did you speak of the one retained in the expediente or the one which was handed to him for his private convenience?

Ans. It was the original—the one which was in the expediente.

216 Ques. 20. Did you examine the copy of the expediente shown you in this office recently?

Ans. Yes, sir, four or five days ago.

Ques. 21. Did you find it to be a correct copy?

Ans. 21. Yes, sir.

Ques. 22. Did you find the copy complete?

Ans. Yes, sir.

Ques. 23. Have you ever heard Inocencio Romero, or any of the other claimants in this case, speak of having lost the original titulo?

Ans. I have been a long time absent from California. I have not heard anything nor seen him for a long time.

Ques. 24. At whose request did you appear as a witness?

Ans. The first one who spoke to me about this case was Perfecto Vicente Gomez, and afterwards Mr. E. A. Lawrence.

Ques. 25. Did Mr. Lawrence say anything to you about the original titulo being lost?

Ans. No, sir.

217

Direct resumed.

Ques. 26. You stated in your answer 22nd that you found the copy of the expediente on file in this case complete; examine the copy of said expediente in the transcript from the land commission now shown you, and state whether you find in it the copy of the grant alluded to; and is it not in that respect incomplete?

(The last clause of the question is objected to as leading.)

Ans. The witness says that he now recollects that he enquired from Mr. Hargous, who saw the copy of the papers with him, about the

grant, and asked where was the grant, and he now recollects that they could not find it.

The transcript being now shown to the witness, he is asked whether he can find a copy of the original grant, and, after searching, says that he cannot find it.

Ques. 27. The examination that you speak of as having been made, was it a careful or a hurried examination ; and was it by yourself or with the interpreter, Mr. Hargous ?

Ans. I made the examination somewhat in a hurry with an interpreter.

218

Cross-examination resumed.

Ques. 28. Do you find on your present examination you find the copy complete, except the absence of the titulo ?

Ans. Yes, sir.

(Signed)

JOSÉ A. CHAVIS.

Sworn to and subscribed before me this 14th day of December, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed : Filed Dec'r 26, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Deposition of Francisco Atoya.

United States district court, northern district of California.

INOCENCIO ROMERO *et al.* }
vs. }
THE UNITED STATES. }

SAN FRANCISCO, *December 22d*, 1857.

219 On this day, before J. Edgar Grymes, a special commissioner and referee, appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Francisco Atoya and John W. Kotlinger, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows :

Present : E. A. Lawrence, for claimants, and E. W. F. Sloan, representing the U. S. dist. att'y.

Questions by claimants' counsel.

Ques. 1. What is your name, age, and place of residence ?

Ans. My name is Francisco Atoya ; 35 years old, and I reside at Alamo, Contra Costa county.

Ques. 2. Did you ever have the title papers of the Romeros in your possession ; if so, did you ever have them examined ; if yea, by whom, and for what purpose, and at what time ?

Ans. No, sir ; I never had them in my possession, but had
220 them examined Mr. Tingley and another person, whose name I do not remember ; this was in 1850. The purpose of having them examined was for the purpose of buying an interest in the claim.

Ques. 3. State what transpired upon the examination of those papers ?

Ans. The papers were found to be good by their examination of them by Mr. Fingley and, I believe, Mr. Redmond, and also by an old gentleman, who was a good Spanish scholar, whom I believe to be Col. Jones, who said that it was a very common way that Mexicans had to give a grants for a sobrante or surplus. Mr. Tingley had doubts whether the grant would stand, because it was for a sobrante ; but Col. Jones satisfied him as to the validity of sobrante grants, by stating that it was a very common way in Mexico of making such grants.

(Counsel for the U. S. object to the whole of this testimony as incompetent.)

Cross-examination.

Ques. 4. Did you make the purchase for part of the land ?

Ans. Yes, sir, but I do not hold it still ; I sold it to Mr.
221 Smith and others in 1853.
(Signed)

FRANCISCO ATOYA.

Sworn to and subscribed before me this 22nd day of December, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed : Filed Dec'r 26th, 1857.

J. EDGAR GRYMES, *Dep. Cl'k.*

Deposition of John W. Kotlinger.

John W. Kotlinger, being duly sworn, deposes and says in answer to the questions propounded to him :

Ques. 1. What is your name, age, and place of residence ?

Ans. My name is John W. Kotlinger, 37 years of age, and I reside in this city.

Ques. 2. Where did you reside in 1850, and what was your business then ?

Ans. I reside in 1850 in the pueblo of San José ; my business was interpreting and translating up to the month of May, about which time I was admitted as a member of the bar.

Ques. 3. Do you recollect anything about the suit between Domingo Peralta on the one side, and Romero and Garcia, on the other, in 1850 ? If so, state what you recollect in regard to it.

222 Ans. I recollect there was a suit pending in the district court of the 3rd judicial district between Domingo Peralta and Romero and Garcia about some lands in Contra Costa county. Whether said

suit was in 1850 or 1851, I cannot state certainly. I lived in San José until the latter end of 1851, attending to law business, at which time I left San José.

I recollect that I was employed in that suit in which Col. Sanford was counsel for Peralta. I was employed to make certain translations of Spanish documents to be used on the trial by Col. Sanford.

Ques. 4. Do you recollect of Domingo Peralta coming there and preparing for the trial? If so, state what occurred at that time.

Ans. I recollect having seen Domingo Peralta at least twice in Mr. Sanford's office. I was doing the interpreting for Mr. Sanford, and have some recollection regarding the matters regarding the conversation between Peralta and Sanford. The conversation of Peralta was regarding his law suit between himself and Romero and Garcia.

223 So far as I can recollect, Peralta did not appear to deny that the
Romeros had a title to certain lands which he disputed against
them; but he, Peralta, seemed to think that his title covered
the lands in dispute.

As far as my recollection serves me, I think that Peralta stated that the Romeros got their title to the lands which he claimed because the governor did not know that the land had already been granted.

(Counsel for the U. S. objects to all that part of the answer which details the statement of Domingo Peralta.)

Ques. 5. Do you know what became of the title papers of the Romero's after that trial?

Ans. No, sir ; I think that I translated myself, in court, the title papers of the contending parties ; but I am not positive about it, because I was frequently employed then in translating Spanish documents, and I might easily be mistaken about these papers and others that I translated.

Cross-examination.

Ques. 6. Can you state positively that you ever did see the title papers of the Romeros?

224 Ans. No, sir, I could not. I think I translated them verbally.
 (Signed) JOHN W. KOTLINGER.

Sworn to and subscribed before me this 22nd day of December, A.
D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed : Filed Dec'r 26th, 1857.

J. EDGAR GRYMES,
Deputy Clerk.

Dep. of John Argos.

United States district court, northern district of California.

INOCENCO ROMERO *et al.* }
vs. }
 THE UNITED STATES. }

SAN FRANCISCO, *December 26th, 1857.*

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John Argos, a witness produced on behalf of 225 the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present : U. S. dist. att'y and E. A. Lawrence, esq., for claimants.

Question by

Ques. 1. What is your name, age, and place of residence?

Ans. My name is John Argos ; 39 years old, and I reside in this city.

Ques. 2. What is your native tongue?

Ans. The Spanish language.

Ques. 3. Do you act as interpreter for the Mexican or Spanish people often?

Ans. Yes, sir, frequently—most every day.

Ques. 4. Are you familiar with the English language?

Ans. Yes, sir.

Ques. 5. Are you in the habit of translating from the Spanish 226 into English ; if yea, look at the translations hereto annexed, marked "A," "B" and "C," and say whether they were made by yourself ; if yea, are they correct translations of the documents which they purport to translate?

Ans. I am in the habit of making translations from the Spanish into the English. Said translations, marked "A," "B" and "C," were made by myself, and they are correct translations of the original documents, which I have seen in the surveyor general's office.

Ques. 6. Look at the translation, (exhibit "A,") and state wherein that translation from line 22 to line 28 differs from the translation now on file, and which of them is the correct translation?

Ans. 6. There is a difference in the translation, on account of my looking over the original document, and I think my translation is the correct one.

The words "se nos podia agriciar," referring to the past tense, and meaning "should be granted to us," instead of "can be granted to us."

Ques. 7. Does the last clause "se nos podia agricia," mean that the land might at that time, (1847,) be granted, or does it refer to the

contents of the papers made by the alcalde in 1844, and being
227 merely words of description of those orders?

Ans. It refers to the papers of 1844, and, as I have already said, they are in the past tense.

Ques. 8. State the character of the language of the documents you have translated.

Ans. I have found it to be in great many parts incorrect, and improper phrases used in others.

Ques. 9. State anything further which you discerned peculiar to those papers.

Ans. Faults in spelling, and some in grammar. It is difficult to make out the meaning.

Ques. 10. Look at lines 12 to 15 of Exhibit "C," page 4, hereto annexed, and state whether the original meaning in Spanish of that sentence is subject to the lands being granted by the Mexican government, or refers to the acknowledgment of the title by the then existing provisional government.

Ans. It refers to the acknowledgment of the title by the administration at that time, (1847.) It is very obscurely explained, but I think it means and has reference to the confirmation of the
228 titles by the American courts.

(Signed)

J. ARGOS.

Sworn to and subscribed before me this 26th day of December, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

EXHIBIT A.

Translation of Exhibit No. 3, A. F., annexed to deposition of Antonio Maria Pico, on page 27 of transcript from the land commission.

To the Constitutional Alcalde :

The subscriber of this humble representation has the honor to apply to you, founded on the right of petition, which the law grants to every citizen, and as likewise his excellency the governor of this department recognizes in his proclamation, that every citizen be justly attended in his petition and claims.

As early as the year '44 there was sent an order from the former government to this justice's court that a survey should be made of the lands called "Juntos," which we asked for jointly, (I and my brother Inocencio Romero,) after the previous citation of the adjoining land owners, which at the present time has not been fulfilled.

229 What we ask of you, as the first magistrate of this district, is, to have an information made, or that a testimonial be given to us by the alcalde, who was such in the year '44, of the reports which were passed to the government, that "se podia agracias," that said lands should be granted to us.

Wherefore we pray you to be pleased to provide charitably in favor of the claimant.

Pueblo de San José Guadalupe.

[REC. CLXXX, D. T. 1862.]—7

EXHIBIT B.

Translation of Exhibit No. 5 to the deposition of A. M. Pico, page 31 of the transcript from the land commission,

Señor Justice of the Peace of the Pueblo of San José de Guadalupe :

José Romero, with due respect, represents before you that there are some years since I solicited a tract of land in the cañada de San Ramon, and bordering upon the land belonging to Mariano Castro, taking the sobrante of which the title deed of Mr. Castro (which are two leagues) speaks, and thence bordering with the land of the deceased Welch on the north.

Señor Justice, his excellency the governor, declared that the lands of Señor Castro should be surveyed, and that possession of the sobrante should be given to us ; but this has never been complied with for want of an opportunity to do so. The papers to show this
230 order ought to be in the justice's court of this pueblo.

Sir, I humbly represent to you that we are two brothers, with a numerous family, and some stock, and without a piece of land to raise them on ; in view of which we beg "de ver por los inter-dados" of you to do justice for the interested parties as soon as it can possibly be done, in order that we may be able to settle and put on our stock.

Wherefore I humbly beg you to provide, as I have petitioned, which is a favor I expect of you.

JOSE + ROMERO.

Cruz.

INOCENTIO + ROMERO.

Pueblo of San José, 31 March, 1847.

EXHIBIT C.

Translation of deed from José Romero to Garcia, page — of the transcript.

In the pueblo of San José de Guadalupe, in Upper California, on the 15th day of January, in the year one thousand four hundred and forty-seven, before Juan Burton and the present witnesses, Don Guillermo Castro, Don Pedro Davis, and Don José Fernandez, appeared José Romero and Francisco Garcia ; and the first said
231 that he made a donation of half of the land he solicited jointly with Inocencio Romero to said Garcia for the consideration of sixty dollars, which he has received ; and that in future the heirs of José Romero may not have any cause of action to said part of said land, José Romero, his wife, Maria Garcia, and the said witnesses subscribed hereunto ; both parties being subject to that, if the government grants it in full property ; and if the contrary, Garcia will loose equally with Romero, without having any cause of action to reclaim the money given him.

In witness whereof, I subscribe officially, in order that this deed may be valid.

JOHN BURTON, *Alcalde.*

JOSE ROMERO, +.
MARIA GARCIA, +.

In witness :

JOSE FERNANDEZ.
PEDRO DAVIS.

Endorsed : Filed Dec'r 26th, 1857.

J. EDGAR GRYMES, *Deputy.*

Deed—José Romero to Francis P. Wilkes.

233 This indenture, made the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and forty-nine, between José Romero, of the Pueblo de San José, of the first part, and Francis P. Wilkes of the same place, of the second part, witnesseth : That said party of the first part, in consideration of the sum of one hundred dollars in hand duly paid, hath sold, and by these presents doth grant and convey unto the said party of the second part, his heirs and assigns forever, all that certain piece or parcel of land lying and being in the jurisdiction of the Pueblo de San José, on the north side of the bay, in the valley of San Roman, joining the farm of the Pachecos, being an equal undivided eighth part of a ranch granted by Micheltorena, then governor of California, to said José Romero and Innocentia Romero, together with all and singular the rights, privileges, and appurtenances thereunto belonging, or in any-wise appertaining ; to have and to hold the same unto the said party of the second part, his heirs and assigns, forever.

And the said party of the first part, for himself, his heirs, administrators and assigns, doth covenant and agree that at delivery hereof he is the lawful owner of the premises above granted, and seized of a good and indefeasible estate of inheritance therein, clear of all incumbrance whatever, of every name and nature, and that he will warrant and defend the above-described premises in the quiet
234 and peaceable possession of the said party of the second part, his heirs and assigns, forever.

In testimony whereof, I have hereunto set my hand and seal the day and year first above written.

JOSE ROMERO. ^{his} + [saal.]
mark.

In presence of—

W. CAMPBELL.
K. H. DIMMICK.

TERRITORY OF CALIFORNIA,

District of San José, ss :

On this 24th day of March, A. D. 1849, before me personally came José Romero, to me known to be the person described in and who ex-

ecuted the within conveyance, and duly acknowledged that he executed the same for the purposes therein mentioned.

K. H. DIMMICK,
1st *Alcalde*.

Recorded April 12th, A. D. 1858, in book C of deeds, page 359, records of Contra Costa county, California.

L. C. WITTENMYER,
County Recorder.

Endorsed on the back :

Recorded in the Jusagdo del Pueblo de San José March 24, A. D. 1849, in book 4 of deeds, page 212.

K. H. DIMMICK, *Alcalde*.

Filed Jan. 4, 1858.

W. H. CHEEVERS,
Dep. Clerk.

235 *Deed—Francis P. Wilks and wife to Francisco Otoya.*

This indenture, made this first day of September, anno Domini eighteen hundred and fifty, between Francis P. Wilks and his wife Maria Ceseña, of Santa Clara county, of the first part, and Francisco Otoya, of Contra Costa county, of the second part, witnesseth : That said party of the first part, for and in consideration of the sum of nine hundred dollars in hand, duly paid at or before the ensembling of these presents, the receipt whereof is hereby acknowledged, hath bargained, sold and conveyed, and by these presents doth bargain, sell, convey, quitclaim, release, and grant unto the said party of the second part, his heirs, administrators and assigns, forever, all that particular piece or parcel of land situate and being in the county of Contra Costa, on the north side of the bay, in the valley of San Ramon, joining the farm of the Pacheco, being one whole and undivided eighth part of a rancho granted by Micheltorena, when governor of California, to José and Inocencio Romero ; together with each and singular the rights, privileges, and appurtenances, thereunto, or in anywise appertaining. To have and to hold the same unto the said party of the second part, his heirs, and assigns, forever.

And the said party of the first part, for himself, his heirs, administrators, and assigns, doth covenant and agree that at delivery hereof he is the lawful owner of the premises above granted.

In testimony whereof, we have hereunto set our hands and seals, in the city of San José, day and date first above written.

236 F. P. WILKS. [L. s.]
her
MARIA + CESENA. [L. s.]
mark.

Signed, sealed, and delivered in our presence—

Witness: SULO'R M. CASTRO.
I. A. YOELL.

STATE OF CALIFORNIA,

County of Santa Clara, ss:

On the fifth day of May, A. D. one thousand eight hundred and fifty-eight, before me, John B. Hewson, county clerk in and for said county, personally appeared I. A. Yoell, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposed and said that he resides in San José, Santa Clara county; that he was present and saw F. P. Wilks and Maria Cesena, known to him to be the same persons described in and who executed the annexed instrument as parties thereto, sign, seal, and deliver the same, and acknowledged in his presence that they executed the same freely and voluntarily for the uses and purposes therein mentioned, and that he, the deponent, thereupon signed his name as a subscribing witness.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

JOHN B. HEWSON,
County Clerk.

Deed—Francis P. Wilks and wife to Francisco Otoya.

237 Recorded May 11th, 1858, in vol. 6 of deeds, page 384, records of Contra Costa county.

L. C. WITTINMYER, *Co. Recorder,*
By M. B. HAWISON, *Deputy.*

Endorsed on back:

This deed was filed for record 20th day of December, 1850, 1 o'clock and 20 minutes. Recorded pages 182 and 183, volume (1,) in recorder's office, in Contra Costa county, 20th December, 1850.

THOMAS A. BROWN,
County Recorder.

Filed for record, at request of F. Vandewater, May 11th, 1858, at 10 o'clock a. m.

The within deed is admitted in evidence, by consent, January 4th, 1858.

E. A. LAWRENCE,
Att'y for Claimant.
P. DELLA TORRE,
U. S. Attorney.

Filed Jan'y 4th, 1858.

WM. H. CHEEVERS,
Dep. Clerk.

238 *Certified copy of deed of Francisco Garcia and wife to Jones, Mitchell, Thompson, and Yager.*

Know all men by these presents that we, Francisco Garcia and Manuela Sepulvida his wife, both of San José, county of Santa Clara, in

consideration of the sum of four thousand dollars, lawful money of the United States, to us in hand paid by John M. Jones, William H. Mitchell, James S. Thompson, and Cornelius Yager, the receipt whereof we do hereby acknowledge, have bargained, sold, and quit-claimed, and by these presents do bargain, sell, and quitclaim, unto the said John M. Jones, William H. Mitchell, James T. Thompson, and Cornelius Yager, their heirs and assigns, forever, all our and each of our rights, title, interest, claim, and demand, both at law and equity, and as well as in possession as in expectancy of, in, and to the farm or rancho known as the Juntas, and bounded by the land of deceased William Welch, Juana Pacheco, Joaquin Moraga, and deceased Bartolo Pacheco, with all and singular the hereditaments and appurtenances thereunto belonging, with the exception of moveable or personal property. To have and to hold the said John M. Jones, William H. Mitchell, James T. Thompson, and Cornelius Yager, all our aforesaid right, title, interest, &c., in and to the above-named land or rancho of Las Juntas, to them and to their heirs or assigns forever.

In witness whereof, we have hereunto placed our hands and
239 seals this eleventh day of November, A. D. 1851.

his
FRANCISCO + GARCIA. [L. s.]
mark.
her
MANUELA + SEPULVIDA. [L. s.]
mark.

Signed, sealed, and delivered in presence of—
H. CAMPBELL.

*Certified copy of deed of Francisco Garcia and wife, Jones, Mitchell,
Thompson, and Yager.*

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On this 10th day of November, A. D. 1851, before me, a notary public in and for the county of Santa Clara, personally came Francisco Garcia and Manuela Garcia, his wife, to me known to be the persons described in and signed the foregoing conveyance, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and she the said Manuela Garcia, being by me made acquainted with the contents of said conveyance on an examination separate and apart from her husband, acknowledged that she executed the same freely and voluntarily, without undue influence from her said husband, and that she did not wish to retract the execution thereof.

Given under my hand and notarial seal this the day and year above mentioned.

C. T. RYLAND,
Notary Public.

240 STATE OF CAL.,
Contra Costa Co. :

The foregoing instrument was filed for record on the 13th day of November, 1851, at 9½ of the clock a. m. Recorded 15th same month.

THOS. A. BROWN,
Recorder.

STATE OF CALIFORNIA,
County of Contra Costa, ss :

I, Lewis A. Wittimyer, county recorder in and for said county, hereby certify that the foregoing is a full, true, and correct copy from the record of an instrument duly recorded in my office in book of deeds, volume one, at pages 438, 439, and 440.

In testimony whereof, I have hereunto set my hand and affixed my [SEAL.] official seal this 24th day of December, A. D. 1857.

LEWIS C. WITTIMYER,
County Recorder.

The within certified copy of deed admitted in evidence, by consent, Jan. 4th, 1858.

E. A. LAWRENCE,
Att'y for Claimant.
 P. DELLA TORRE,
U. S. Att'y.

Filed Jan'y 4, 1858.

W. H. CHEEVERS,
Dept. Clerk.

Stipulation in regard to affidavits.

241 In the district court of the United States for the northern district of California.

J. ROMERO *et al.* }
vs. }
 THE UNITED STATES. }

It is hereby stipulated that the affidavits of J. W. Redmond, William McDaniel, Edward L. Stetson, Thomas M. Swan, B. C. Whitman, John B. Richmond, and Joseph Winston, upon the motion for rehearing herein, may be used upon the hearing of this cause with the same force and effect and in the same manner as if they were depositions taken in the presence of both counsel for claimants and appellees, subject to all legal objections and exceptions to their competency and relevancy.

It is further stipulated that the deposition of Capt. H. W. Halleck, taken in the case of the city of San Francisco and the United States,

No. 280, before the land commission, may be read in the same manner as if taken in this case.

San Francisco, Dec. 27, 1857.

P. DELLA TORRE,
U S. Att'y.

E. W. F. SLOAN.

242

Assistant Att'y.

E. A. LAWRENCE,

J. B. CROCKETT,

Att'ys for Claimants.

Endorsed: Filed 4th January, A. D. 1858.

J. A. MONROE, *Clk.*

243

Deed from A. C. Campbell to B. Valencia.

Know all men by these presents that I, Alvin C. Campbell, of the county of San Francisco, State of California, for and in consideration of the sum of one dollar to me in hand paid, the receipt of which is hereby acknowledged, and for the further consideration of a full settlement this day made by and between Bernada Valencia and Antonio Ma. Pico, on account of the sale of a certain rancho, known as the rancho "Lobos Pintos Lomitas," which said rancho was sold by the said Antonio Ma. Pico, as agent of the said Valencia and her husband, for the sum of six hundred dollars, to Palmer, Cook & Co., two thousand dollars of which sum is now due, for which the said Pico has given an order on the said Palmer, Cook & Co., have remised, released and quitclaim, and do by these presents remise, release, and forever quitclaim, unto the said Bernada Valencia, and to her heirs, all my right, title and interest which I hold in and to the rancho known as the "Los Juntos," situated in the county of Contra Costa, State of California, lying between the rancho of Mariano Castro and Bartolo Pacheco, and being the same piece of land as purchased by me from

244 Mariano Romero, the interest of said Romero being one undivided third of said rancho "Los Juntos," together with the house and corral situated thereon, and all the appurtenances thereunto belonging.

In witness whereof, I have hereunto set my hand and affixed my seal this 16th day of February, 1856.

The words "Los Juntos" interlined before signing.

A. C. CAMPBELL. [SEAL.]

STATE OF CALIFORNIA,

County of Santa Clara, ss:

On this sixteenth day of February, A. D. 1856, before me, E. P. Reed, a notary public, in and for said county, personally appeared Alvin C. Campbell, known to me to be the person described in and who executed the foregoing conveyance, and acknowledged that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal,
[SEAL.] in the county aforesaid, the day and year last above witten.

EDWARD P. REED,
Notary Public.

Recorded, at request of Edwin A. Lawrence, September 30th,
245 1856, at 9 a. m., in book of deeds, vol. five, on page 231, records of Contra Costa, Cal.

C. YAGER,
Co. Recorder,
By E. PARKER, *Dep.*

Endorsed: Filed Jan'y 11, 1858.

W. H. CHEVERS,
Dep. Clerk.

Deed from B. Valencia and B. Valencia to E. A. Lawrence.

This indenture, made the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and fifty-six, between Maria Bernal de Valencia and Bruno Valencia, her husband, of Contra Costa county, California, of the first part, and Edwin A. Lawrence, of the city of San Francisco and State of California, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of three thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has
granted, bargained, sold, and conveyed, and by these presents
246 do grant, bargain, sell, and convey, unto the said party of the second part, and to his heirs and assigns forever, all the right, title, and interest of said parties of the first part, of, in, and to the rancho known as "Las Juntos," situated in the county of Contra Costa and State of California, lying between the rancho of Mariano Castro and Bartolo Pacheco, and being the same piece of land conveyed by A. C. Campbell to said Bernal Valencia, by the name of Bernada Valencia, on the 16th day of February, A. D. 1856, which said deed is recorded herewith, together with all the rights which said parties of the first part, or either of them, may have against Antonio Maria Pico, on account of sale by said Pico to Palmer, Cook & Co., of the rancho "Lobos Pintos Lomitas," mentioned in said deed from said Campbell to said Bernada Valencia, said interests above mentioned being one-third of said rancho of two leagues; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest,
247 property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part and his assigns forever.

In witness whereof, the said parties of the first part has hereunto set their hands and seals the day and year first above written.

BERNADA X. VALENCIA. [SEAL.]
BRUNO VALENCIA. [SEAL.]

Signed, sealed, and delivered in presence of—

A. M. CHAPELLE.

STATE OF CALIFORNIA,

City and County of San Francisco, ss :

On this thirtieth day of September, A. D. one thousand eight hundred and fifty-six, before me, Orrin Bailey, a notary public in and for the county, personally appeared Bruno Valencia and Bernada Valencia, his wife, of Contra Costa, personally known to me to
248 be the individuals described in and who executed the annexed instrument, and severally acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Bernada Valencia, after being made by me acquainted with the contents of said instrument, acknowledged on an examination by me made separate and apart from and without the hearing of her said husband, that she executed the same without fear or compulsion, or under influence of her husband, and that she did not wish to retract the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my [SEAL.] official seal the day and year first above written.

ORRIN BAILEY,
Notary Public.

Endorsed: Filed for record Sept. 30, 1856, at 9 a. m., at request of Edwin A. Lawrence.

C. YAGER, *Co. R.*,
By E. PARKER, *Dep.*

Filed January 11th, 1858.

W. H. CHEVERS,
Dep. Clerk.

Stipulation substituting E. A. Lawrence.

249 In the district court of the United States for the northern district of California.

I. ROMERO *et al.* }
vs. }
THE UNITED STATES. }

It is hereby stipulated that the decree from A. C. Campbell to Bernada Valencia, and the deed from Bernada Valencia and husband

E. A. LAWRENCE,
Att'y for Claimants.
P. DELLA TORRE,
U. S. Att'y.

E. W. F. SLOAN.

252 the northern district of California, duly authorized to administer oaths, &c., &c., came Jeremiah Fallon and Michael Murray, witnesses produced on behalf of the United States in case No. 340, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows :

Present: P. Della Torre, esq., U. S. dis't att'y, and E. A. Lawrence, esq., for claimants.

Questions by U. S. dis't att'y.

1st quest. What is your name, age, and place of residence?

1st ans. My name is Jeremiah Fallon; 40 years old; and I reside at San Ramon, Alameda county.

2nd quest. Please state all the information you know in this case.

2nd ans. In 1847 Inocencio Romero proposed to sell me a part of this ranch. I asked him who he derived his papers from; his answer was, that he derived them from governor Micheltorena. I asked him what lands belonged to him; he told me the land laid between Moraga's ranch and Mariano Castro's, and from thence
253 running in the direction of Monte Diablo. I asked him if he had the papers there; he said no, that they were in Monter y. I declined buying from him on account of his not having his title papers.

3rd quest. When did you first come to California?

3rd ans. In October, 1846.

Cross-examination.

4th quest. Did Inocencio Romero tell you whether he had a good title or not for the ranch?

4th ans. He told me he had a good and complete title for it.

The piece of land that I proposed to buy was that occupied by negro Garcia. The only reason that I did not buy was because he had not the title papers with him. Romero told me that the creek where Mitchel had a blacksmith shop was his line. The creek is not as far up as the inhuesto tree. Romero was living on the land at the time that I wished to purchase from him; he was also making sales of that land at that time.

5th quest. By what name was this land known at that time?

5th ans. It was known at that time as the sobrante of Romero, or the Romero's ranch.

Counsel for claimants objects to proving anything which
254 Inocencio Romero told witness, as hearsay evidence.

Objection waived.

JEREMIAH FALLON.

Sworn to and subscribed before me this 21st day of May, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

Dep. of M. Murray.

Michael Murray, being duly sworn, deposes and says: My name is Michael Murray; 49 years old; and I reside on the ranch of Amador.

Quest. 1st. Please state all that you know about this case.

Ans. 1st. I had some conversations with Romero, but I could not understand him, as I had just come in the country, and could not speak Spanish. He never showed me any paper for that ranch. This was mere a casual conversation.

Cross-examined.

I have been living on the Amador ranch since 1850. I passed through the Romero ranch in 1848. It was then known as the Romero ranch, and was called the sobrante. I saw improvements on the ranch in 1850, belonging to Romero, which appeared to have been built several years, but I cannot state how long.

MICHAEL MURRAY.

Sworn to and subscribed before me this 21st day of May, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed May 21st, 1858.

W. H. CHEVERS, *Clerk.*

Stipulation in regard to dep. of Frémont, &c.

U. S. district court.

THE UNITED STATES }
ads. } No. 304.
INOC. ROMERO *et als.* }

SAN FRANCISCO, *June 14, 1858.*

It is hereby stipulated and agreed that that portion of the deposition of John C. Frémont, taken in the case of the U. S. *vs* J. G. Morehead *et al*, No. 106, relating to the public archives of the late Mexican government in California, be read in evidence herein on the part of the U. S., with the same effect as if the same had been originally taken in this case; and that the following is a true and correct copy of such portion.

P. DELLA TORRE, *U. S. Att'y.*
E. A. LAWRENCE, *Att'y for Clm'ts.*

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Dep. of J. C. Frémont.

United States district court, northern district of Cal'a.

THE UNITED STATES }
ads. }
JAS. G. MOREHEAD, adm'r. }

SAN FRANCISCO, *May 7, 1858.*

On this day, before the district court (by consent) of the United States for the northern district of California, duly authorized to ad-

minister oaths, &c., &c., came John C. Frémont, a witness produced on behalf of the claimants in case No. 106, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 89 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: The district attorney and Mr. Glassell for U. S., and Mr. V. E. Howard for claimants.

Question by claimant's counsel.

Please to state all you know in relation to the custody of the records and documents belonging to the former government touching land titles in California.

Answer. About August 14, 1846, I received an order from Com.

Stockton, then at Los Angeles, directing me to take charge of
257 the public archives, which were then in possession of Don Luis

Vignes, an old resident of Los Angeles, in whose charge they had been placed, as I understood, by Pico Pico. I took possession of them accordingly, and retained them in my possession until about the end of September, when I placed them at what was then called Sutter's fort, on the American river. They made together about two mule loads, and I transported them in that way from Los Angeles to Sutter's fort.

Some time in March, 1847, being myself at Los Angeles, I received an order from Gen. Kearney, dated about March 17, directing me to deliver up all the archives and public papers belonging to the former government. Under this order they were delivered up, and consigned directly, I think, to the care of Mr. Williard P. Hall, at Monterey. They were kept in Mr. Larkin's house, where I saw them about the 13th May, 1847. I had been, up to the time I received the order of Gen. Kearney, military commandant and governor of California. Mr. Hall was with Gen. Kearney, I don't know in what capacity. Mr. Thos. O. Larkin had been acting as U. S. consul. I understood that the archives had been kept in trunks by Mr. Vignes. The Californians had just evacuated Los Angeles when we entered on the 13th

August. The archives were in reasonably good condition. I
258 formed them into bales convenient for packing. They were

under my immediate charge until about the end of September, and up to that time no one but myself had access to them. I, myself, frequently examined them. I think I examined more or less every title in the archives. At the end of September they passed into the charge of E. M. Kern, then commanding at Sutter's fort. About the time we took possession of Los Angeles Pio Pico went to Sonora, where he remained, I think, until hostilities ceased.

Cross-examined.

I was aware of the value of these archives, and took precautions to have them protected. They were packed in bales and covered with blankets, so as to be secure from loss. A part of them were subsequently lost. I carried home some of them to be inspected at Washington. One, I know, I left there. The others were lost with other

effects in the mountains of San Juan. One of these titles referred to a grant to Gen'l Castro. It was, I think, a title; whether the full title, or the papers concerning a grant, I am unable to say. This was lost in the mountains. There were three or four lost in the mountains. The one left at Washington referred to the MacNamara grant. The archives I allude to were only those found at Los Angeles. I know nothing of any at Monterey, or at any other point than Los Angeles.

259 When I last saw them they were at Mr. Larkin's private residence, or in a room adjoining a store above which he resided. It was not used as a hospital.

* * * * *

J. C. FREMONT.

Taken and subscribed before me this 7th May, 1858.

OGDEN HOFFMAN.

Endorsed: Filed June 14th, 1858.

W. H. CHEVERS, *Clerk.*

Dep. of H. W. Halleck.

Extract from the deposition Henry W. Halleck, taken before Com'r. R. Aug. Thompson, in the cause entitled *The United States vs. The City of San Francisco*:

Answer. I was directed by Governor Mason to examine the archives and report on certain points connected with said land title, which I did. The archives being very voluminous, the examination, for want of time, was not very thorough. The archives were also in great confusion, and much mutilated, and were kept in different places in the town; parts of the same document were sometimes found in different places.

260 With the assistance of W. E. P. Hartnell I arranged them in the best manner I could under the circumstances. When I first went to Monterey, in January, 1847, I found a portion of the archives in the custom-house, which was then used as a hospital for the sick soldiers and seamen. They were piled up against the wall in the room in which the sick were lying, and the persons in attendance were using them as waste paper.

They were supposed to be custom-house documents and of no value. Some weeks afterwards I picked up a mutilated document from the floor, and on examination found it to be a part of an expediente in reference to land title. I called General Kearney's attention to it, and he sent Mr. Hartnell to see what they were. He reported that they were part of the archives of the government of mixed up with custom-house papers, and they were then removed to a more secure place and locked up.

Another portion of what now constitutes the archives in the custody of the U. S. surveyor general were brought by Col. Frémont from Los Angeles in, I think, the month of May, 1847. They packed on mules, and were in a very bad condition, being much torn and mutilated.

These constitute all the archives now in custody of the
 261 surveyor general, except a few that were brought in afterwards by individuals, who stated that they were public documents belonging to the archives.

The fact of such deposit, and, together with the date, was in all cases endorsed on such document either by myself or Mr. Hartnell.

Stipulation

It is hereby mutually stipulated that the foregoing extract of deposition may be used the same as if the whole deposition had been transcribed, on the hearing of this cause.

E. A. LAWRENCE,
Att'y for Claimants.

E. W. F. SLOAN,
For the U. S.

P. DELLA TORRE,
U. S. Att'y.

Endorsed: Filed June 14th, 1858.

W. H. CHEVERS, *Clerk.*

Lep. of Y. Sibrán.

United States district court, northern district of California.

THE UNITED STATES, }
ads.
 INOCENCIO ROMERO. }

SAN FRANCISCO, *May 3rd*, 1858.

On this day, before W. H. Chevers, a commissioner of the
 262 United States, for the district of California, duly authorized to administer oaths, &c., &c., came Ysidro Sibrán, a witness produced on behalf of the claimant in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by John Argos, a sworn interpreter.

Present: E. A. Lawrence for claimant, and E. W. F. Sloan representing the U. S. dist. att'y.

Questions by claimants' counsel.

1st. What is your name, age, and place of residence?

Answer. Ysidro Sibrán; am little more than 37 years of age; and reside in Contra Costa county, Cal.

2nd. Are you acquainted with the rancho, in said county, known as the Romero rancho; and if so, how long have you known it?

Answer. I know said rancho, and have known it since 1842
 263 or 1843.

3rd. Are you acquainted with the Romeros; and if so, do you know when they took possession of said rancho?

Answer. I know the three brothers Romero, and they took possession, or rather Inocencio took possession, of the said rancho in 1842 or 1843.

4th. Did he make any improvements on the said land and place stock there? If yea, state all you know about it.

Answer. He built an adobe house on it. Built a corral, and removed horses and cattle on to it from the Amador ranch, where he resided formerly. He enclosed a small field, in which he planted corn, beans, water melons, &c., for family uses. He had his family there with him. The adobe house above referred to was there a few months ago, and was then occupied by Mr. Tice, who holds under the Romero title. The house is still there, I saw it yesterday.

5th. Do you know whether the Romeros had a title to their land?

Answer. I have never seen the title, but Inocencio Romero told me in San José, some time in 1841, 1842, 1843, or 1844, that he had the title to the land. This conversation occurred subsequent
264 to his taking possession of the land. He first had permission from the judge to occupy the land. I know of Romero going three or four times to Monterey to get his title papers, and the conversation above referred to took place in San José, when Romero was sick there, after his return from Monterey. He then told me, I have my title papers in my pocket all right.

6th. How long have you lived in the vicinity of the Romero ranch? and state how you have been occupied during that time.

Answer. I have been working about there ever since 1833, and moved on to a neighboring ranch with my family in 1852, the ("San Miguel") ranch. I was engaged as cook in 1833, on Welch's ranch. Afterwards was a vaquero in all the neighboring ranchos. Also was employed on the San Raymon ranch in 1842, 1844, 1848, and 1850, sometimes one month and sometimes three months.

7th. What was the general reputation among the adjoining ranch owners as to Romero having title to his land?

Answer. Romero always lived there until he sold out. I always supposed him to have a title to the ranch. It was known
265 by everybody as such and called the Romero ranch, which name it bears at the present moment.

8th. Do you know of the Romero making any sales of his land? If yea, state what you know in regard to it.

Answer. He sold to a man named Frank, a foreigner, and also to Garcia, called the Negro Garcia, and to others whose names I do not know. I don't know exactly when he sold. Garcia was there in 1846.

9th. Do you know of a boundary line being established between the San Ramon ranch, belonging to Castro and Pacheco, and the Romero ranch? If yea, state all you know in regard to it.

Answer. I have heard from the owners of the rancho, of Bartolo Pacheco and Mariano Castro, that the line of division between the ranch in question and that of Bartolo Pacheco commences at the Cañada Verde, running towards the Inhuerto—being a roble engrafted with a willow, on the banks of the Inhuerto creek, which takes its name from this tree—and thence running in a straight line to the "Cuchilla de las Trampas." I have often heard the subject dis-

266 cussed, but don't remember when the line was run. I am one of the heirs of the San Miguel or Sibrian ranch above spoken of as adjoining this ranch.

his
YSIDRO + SIBRIAN.
mark.

Sworn to and subscribed May 3d, 1858, before me,
W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed July 10, 1858.

W. H. CHEVERS, *Clerk.*

Dep. of N. B. Smith.

United States district court, northern district of California.

THE UNITED STATES
vs.
INOCENCIO ROMERO *et al.* }

SAN FRANCISCO, *May 21st*, 1858.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dist. court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came N. B. Smith, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows :

Present: E. A. Lawrence, esq., for claimants, and P. Della Torre, esq., for the U. S.

Questions by claimants' counsel.

1st quest. What is your name, age, and place of residence?

1st ans. Napoleon Bonaparte Smith is my name; 40 years old, and I reside in Martinez, Contra Costa county.

2nd quest. Are you acquainted with the Romero rancho, claimed in this case; if yea, how long have you known it?

2nd ans. I am acquainted with it, and have been since 1847. I have lived in that county and in the vicinity of the rancho, off and on, since 1847.

3rd quest. State what you know in regard to the possession and occupation of said ranch by the Romeros.

3rd ans. The first time I visited the ranch was in 1847, then José and Inocencio Romero, with their families, were living upon the ranch. They were living in 2 or 3 houses at that time; they had little gardens attached to the houses and were sowing grain. The improvements looked as if they had been built some little time before—several years before, I should judge; they had horses and cattle grazing on the land. I knew of their making sales of portions of the ranch all along from 1847 down to the present time. I bought a portion of the land myself from Inocencio Ro-

mero, in 1851, which I have since sold to Messrs. Wall and Elwell. I have no interest now in this case.

4th quest. State what you know in regard to the boundary line between the Romero ranch and the rancho of San Ramon, belonging to Mariano Castro and Bartolo Pacheco?

4th ans. There was a lawsuit between Garcia, one of the owners of the Romero ranch, and Domingo Peralta, one of the owners of the San Ramon ranch, in the year 1847 or 1848, in regard to the possession and ownership of a piece of land where Garcia's house was built, being adjoining the present town of Alamo. This lawsuit was before Squire Brown, my father-in-law, who was alcade of that district at that time. I acted as interpreter for the court on the trial. Domingo Peralta attempted to build a house on the land claimed by Garcia, and Garcia brought the suit to prevent him from building it. The suit was decided in favor of Garcia, and I understood that the house was torn down afterwards.

I own an interest in the said San Ramon ranch, having bought out one of the heirs of Bartolo Pacheco. I have always understood from the testimony taken on that trial, and also from conversations which I have repeatedly had with Tomas and Ignacio Pacheco, sons of Bartolo Pacheco, that the San Ramon ranch commenced on the Amador line, and ran north down the valley two leagues to the "Inhurto" or the grafted tree on the Inhurto creek. The line running from the Inhurto westward to the "Los Trampas," a high hill, has been generally regarded as the northern boundary of the San Ramon ranch amongst the heirs of Bartolo Pacheco.

5th quest. What office did you hold during the two first years after the establishment of the State government?

5th ans. County assessor. In that capacity Domingo Peralta made oath before me that the San Ramon ranch contained but two leagues of land, running two leagues in length from the Amador line and one league in width, as I have stated before.

I had to examine each land-owner in regard to the quantity and description and location of his land, for the purpose of assessing the same properly for taxation. The above statement was given to me by Peralta, in my official capacity, when I applied to him for a statement of his property. The statement was made verbally by putting him under oath on the cross, and then questioning him in regard to his property, for the purpose of assessing the same for taxation.

(The 4th question and answer and all subsequent thereto are objected to by the district attorney as irrelevant and immaterial.)

N. B. SMITH.

Sworn to and subscribed before me this 21st day of May, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed July 10, 1858.

W. H. CHEVERS, *Clerk.*

Dep. of R. Briones.

United States district court, northern district of California.

THE UNITED STATES,
vs.
 INOCENCIO ROMERO *et al.* }

SAN FRANCISCO, *May 22d*, 1858.

271 On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Ramon Briones, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by Napoleon Bonaparte Smith, a sworn interpreter.

Present: E. A. Lawrence, esq., for claimants, and P. Della Torre, esq., dist. att'y.

Questions by claimants' counsel.

1st quest. What is your name, age, and place of residence?

1st ans. My name is Ramon Briones; 43 years old; and I reside in Contra Costa county.

2nd quest. Are you acquainted with the Romeros and Romero ranch in Contra Costa county; if yea, how long have you known them?

2nd ans. I am acquainted with all the family ever since I can
 272 recollect. I am also well acquainted with the Romero ranch since 1844.

3rd quest. State when Romero first took possession of the ranch and all you know in regard to their possession of it

3rd ans. In 1844 Amador put cattle on the ranch for the Romeros, but they had not at that time arrived with their families, but they moved on to the ranch with their families in the same year. Inocencio was the only one who had a family. Antonio Maria Pico, alcalde of the pueblo of San José, was ordered by Governor Micheltorena to place the Romeros in possession of the sobrante lying between Castro's and Pacheco ranches, because he had granted it to them. Pico put them in possession at that time, according to the order from the governor. Inocencio Romero built an adobe house near the "Palo Colorado." The same house is now in existence and occupied. He had a garden and stock on the ranch.

I have lived in the neighborhood of the Romero ranch since the year 1838. I know he had a title from Governor Micheltorena, because

I saw it in the year 1845. All the neighbors understood and
 273 conceded that the Romeros had a title for the ranch. Mariano

Castro, Bartolo Pacheco, Juana Pacheco, G. Castro, and Joaquin Moraga, who was my father-in-law, José Maria Amador, Guillermo Welch, and Squire Brown, all adjoin and are colindantes of the Romeros' ranch. It was always understood among these parties that

the sobrante of the two leagues belonging to Castro and Pacheco was conceded to Inocencio and José Romero, that the title was in them. My mother owns a ranch in that vicinity. She has had her ranch confirmed to her as Maria Manuela Valencia. I married one of Moraga's daughters in 1846.

Cross-examination.

Quest. 1st. In your reply to the 3rd interrogatory in chief, you say "that Antonio Maria Pico was ordered by Governor Micheltorena to place the Romeros in possession of the sobrante lying between Castro and Pacheco ranchos, because he had granted it to them." How do you know that Governor Micheltorena gave any such order?

Ans. 1st. I know it from having seen the title at Romero's house, and from his being in possession.

Quest. 2nd. Did you ever see the order from Micheltorena
274 to Antonio Maria Pico, directing him to give the possession of the ranch?

Ans. 2nd. No, sir; I saw the title, but not the order.

Quest. 3rd. Where were you when you saw the title from Micheltorena?

Ans. 3rd. At the ranch of San Felipe.

Quest. 4th. Where is the ranch of San Felipe; and who lived there at that time?

Ans. 4th. It is in Contra Costa county, between the ranches of Welch, Brown, and Martinez. My mother and all the family lived there at that time.

Quest. 5th. Who showed you that title?

Ans. 5th. Inocencio Romero.

Quest. 6th. When was it?

Ans. 6th. In 1845. I do not know the month.

Quest. 7th. Why did Inocencio Romero show you that title?

Ans. 7th. Because the neighboring rancheros had a dispute about the land, and said Romero had no title for it; upon which
275 Romero pulled out his papers and said, here is my title.

Quest. 8th. Who was it that Romero showed his papers to that day?

Ans. 8th. Inocencio Romero's son read the papers to me, because his father could not read. I do not recollect the name of Romero's son. He is the eldest. I think it is José, but I am not certain.

Quest. 9th. Did you read those papers yourself?

Ans. 9th. No, sir. I did not read them myself, but heard his son read them.

Quest. 10th. Did you examine those papers?

Ans. 10th. I did not examine them, but look on while he was reading them.

Quest. 11th. Do you know the signature of Micheltorena?

Ans. 11th. Yes, sir.

Quest. 12th. Did you see his signature on those papers, and did you examine it?

Ans. 12th. I saw the signature, and I think it was his signature.

Quest 13th. If you was to see that title paper now would you recognize it?

Ans. 13th. If I was to see it and heard it read I would recognize it.

Quest. 14th. Did that paper say anything about Antonio Maria Pico's being ordered to give possession to Romero?

Ans. 14th. I saw the title paper but not the order; there was no order of that kind on those papers.

Quest. 15th. In whose handwriting was the title paper that you saw?

Ans. 15th. I do not know.

Quest. 16th. Did Romero read it to you alone, or before others; if so, whom?

Ans. 16th. Only myself, Romero and his son were present.

Quest. 17th. At what place was that title given, and what was its date?

Ans. 17th. It bore date of 1844; from Monterey.

Direct resumed.

1st quest. Does Romero's son read well?

1st ans. He does.

277 2nd quest. Do you read and write?

2nd ans. I read a little, and can only sign my name.

4th quest. Who were the colindantes mentioned in question and answer No. 7th, who were disputing about the boundary line?

4th ans. It was Domingo Peralta.

5th quest. Whose name was signed as secretary on the papers you speak of?

5th ans. I do not recollect.

RAMON BRIONES.

Sworn to and subscribed before me this 22nd day of May, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed July 10, 1858.

W. H. CHEVERS, *Clerk.*

Order restoring cause to calendar.

279 In the district court of the United States for the northern district of Cal'a.

J. ROMERO *et al.* }
vs. }
THE UNITED STATES. }

On motion of plaintiffs' attorney and by consent of the United States district attorney in open court expressed, it is hereby ordered that the above cause be restored to the calendar for the purpose of

substituting the names of the real owners of said ranch in place of the original claimants, and for the introduction of such further evidence therein as may be introduced by either party thereto.

San Francisco, Oct. 14th, 1858.

Endorsed : Filed Oct. 14, 1858.

W. H. CHEVERS, *Clerk.*

Motion and affidavits of D. P. Smith and A. J. Tice.

In the district court of the United States for the northern district of California, *ss:*

INOCENCIO ROMERO *et al.* }
vs. } No. 314 on land calendar.
UNITED STATES.

280 You will please take notice that on the facts, and for the reasons stated in the annexed affidavits, I shall, on Monday next, the 20th day of Sept., 1858, at the opening of said district court on that day, or as soon thereafter as counsel can be heard, move said court to set aside the order submitting the said cause to the court, and to open said cause for further proof, and also for leave to make the said David P. Smith and Andrew J. Tice parties to the petition for confirmation, and for such other or further order as may be needful to protect the interests of said Smith and Tice in the said lands.

Dated at San Francisco, Sept. 15, 1858.

J. B. CROCKETT,
Att'y for Claimants.

To P. DELLA TORRE, Esq'r., *District Att'y.*

In the district court of the United States for the northern district of California, *ss:*

INOCENCIO ROMERO *et als.* }
vs. } No. 314 on land calendar.
THE UNITED STATES.

281 David P. Smith, being duly sworn, deposes that the petition of the claimants in the above cause for confirmation of their title was filed in the land commission on the 28th Feb'y, 1852, after which time, to wit, on or about the 28th day of September, 1853, Francisco Attoyo, one of the claimants, sold to this deponent all his (the said Attoyo's) interest in the tract of land in controversy in this cause, at and for the price of \$3,000, which has been fully paid, and for which the deponent holds the receipts of the said Attoyo, specifying that the said sum is in full for the purchase money of the said tract so sold by said Attoyo to the deponent, which receipts deponent is ready to produce to the court. He further deposes that the said Attoyo has left the State of California and gone to foreign parts, without having executed and delivered to deponent a deed for the said premises, and deponent has been compelled to institute a suit in the district court of Contra Costa county against said Attoyo to enforce

such conveyance, which suit is yet pending ; that immediately on purchasing said land deponent took possession thereof and has ever since remained and yet is in the quiet possession thereof, and has expended about \$4,000 in improving the same.

282 He further deposes that he took the advice of counsel as to the necessity of being substituted in said petition for said Attoyo, and was advised that such substitution was unnecessary inasmuch as a confirmation to said Attoyo would enure to the benefit of his vendor; but since then some of the petitioners have caused the deposition of said Attoyo to be taken in said cause on behalf of the claimants, wherein he testifies that he has no interest in said lands, having sold the same to this deponent and others in 1853, which deposition was taken in December, 1857, during the absence from this State of J. B. Crockett, the attorney employed by the deponent to represent his interest in said cause and on whom he especially relied, being the only attorney employed by him in the cause. He further deposes that his said attorney did not return to this State until the 14th August last, and after said cause had been submitted, and within the last three or four days deponent has ascertained, for the first time, that in order to protect his interest in said land it is necessary he should be made a party to said cause and substituted for the said Attoyo as one of the claimants, which he prays may be done.

DAVID P. SMITH.

283 Sworn to and subscribed before me, this 15th Sept'r, 1858.

[SEAL.]

CUTLER McALLISTER,

U. S. Com'r.

Andrew J. Tice, being duly sworn, deposes that after the petition of the claimants for a confirmation was filed, to wit, on the 6th day of December, 1853, Inocencio Romero, one of the petitioners, and his wife, by their deed of that date, conveyed to Domingo Pujol and Francisco Sanjurjo all their right, title, and interest in and to the lands mentioned in said petition and which are in contest in this cause, with a stipulation, however, in said deed that in the event of a confirmation of said claim the said grantees should pay to the grantors the sum of three thousand dollars, in addition to the price before then paid; and also that of all the purchase money remaining unpaid from vendors of other portions of said tract claiming under said grantors, one-half should be paid to the grantors and the other half to the grantees. He further deposes that afterwards, to wit, on the 14th Feb'y, 1855, the said Pujol and Sanjurjo, by their deed of that date, conveyed the land so acquired by them to one James W.

284 Tice, who afterwards, to wit, on the 8th day of August, 1855, by his deed of that date, conveyed to this deponent all, which conveyances have been duly recorded, and deponent is now the owner of the said interest. He further deposes that afterwards, to wit, on the 10th day of August, 1856, the said Inocencio Romero, by his certain instrument in writing, under his hand and seal conveyed, assigned, and transferred to one Manuel Miranda, for a valuable consideration, all his interest in the stipulations aforesaid, and in all

monies in any manner to arise therefrom, and by means of the said conveyance and transfer the said Romero ceased to have any interest whatsoever in said lands or the proceeds thereof. He further deposes that afterwards, to wit, on or about the 26th Dec'r, 1857, some of the claimants caused the deposition of said Romero to be taken in said cause, and to be retaken on the 11th Feb'y, 1858, in which depositions the said Romero testifies amongst other things that he had no interest in said lands, having sold, conveyed, and transferred the same as hereinbefore stated. He further deposes that he was advised by

counsel that it was not necessary he should be made a party to
285 said suit, inasmuch as a confirmation to said Romero would enure to the benefit of his vendors; and at the time when said Romero's depositions were taken, J. B. Crockett, the only attorney employed by deponent to represent his interest in said cause, was absent from this State, and did not return until about the 14th August last, after said cause had been submitted, and deponent was not aware until within the last three or four days that it was necessary he should be made a party to said petition and substituted to the rights of said Romero, so far as relates to deponent's interests in said land. But he is advised by his counsel that unless he is made a party to the said proceeding his rights will be seriously jeopardized, if not totally lost.

A. JACKSON TICE.

Sworn to and subscribed, Sept. 15th, 1858, before me.

W. H. CHEVERS,

U. S. Comm'r.

Endorsed: Filed Oct. 22, 1858.

W. H. CHEVERS, *Clerk.*

286 *Order making Smith and Tice parties.*

INOCENCIO ROMERO *et als.* }
vs. } No. 304.
UNITED STATES.

In the above entitled cause it being represented to the court that since the filing of the original petition for confirmation before the board of United States land commissioners Andrew J. Tice has succeeded to and become the owner of all the right, title, and interest of Inocencio Romero, one of the said petitioners, in and to the lands mentioned in said petition, and which are the subject matter of this suit; and also that David P. Smith has in like manner succeeded to and become the owner of all the right, title, and interest of Francisco Attoyo, of the said petitioners, in and to the said lands, and the said Tice and Smith having petitioned to be made parties to the said cause in order to be allowed to make proof of their respective titles, derived as aforesaid, it is therefore ordered and decreed that the said Andrew J. Tice and David P. Smith be, and they are hereby, admitted as parties to the said cause, with leave to take proof therein in

287 support of their said titles respectively, and with the same effect as if they had united in the original petition for confirmation.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed Oct. 22nd, 1858.

W. H. CHEVERS, *Clerk.*

Dep. of Wm. Comstock.

United States district court, northern district of California.

THE UNITED STATES }
vs. }
INOCENCIO ROMERO *et als.* }

SAN FRANCISCO, *Oct'r* 23, 1858.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came William Comstock, a witness produced on behalf of the claimants, in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: J. B. Crockett, for claimant.

Questions by claimant's att'y.

288 I am 29 years of age; I reside in Contra Costa county; I have no interest in the Romero grant; I am acquainted with Francisco Otoya; I have known him since the summer of 1853; I am acquainted with David P. Smith; he resides on what is called the Romero grant, in Contra Costa county; I think I am acquainted with the handwriting of Francisco Otoya; I have seen him write frequently.

Ques. 1st. Examine the two documents now shown you, marked "Exhibits A and B," and state whether the signatures to the said two documents are genuine, and in the handwriting of the said Otoya.

Ans. 1st. Yes, sir, I think they are both his handwriting. I have heard Mr. Otoya say that he had sold his entire interest in the Romero ranch to Mr. Smith. This was in the fall of 1853. I was at the house the day that Smith took possession—the day Smith was moving his goods. Smith has continued to live upon the ranch ever since, under his purchase from Ortega. Smith has made valuable improvements on the land. I do not know positively where

289 Ortega is. I heard he was in South America. He remained in Contra Costa county from the time he sold out to Smith until some time in this year; that was his home. Smith has continued to occupy the land from the time he bought from Ortega, and he occupies it now. I have seen Ortega frequently since his sale to Smith. He never asserted any claim to the land to me since his sale to Smith.

WM. COMSTOCK.

Subscribed and sworn to before me, this 23rd day of October, A. D. 1858.

CUTLER McALLISTER, *U. S. Com'r.*

Exhibit "A" to dep. of Wm. Comstock.

1853, December 28, Francisco Otoy, Dr.

To cattle from store.....	75,0000
The Gracia cattle.....	60,0000
One two-horse wagon by river.....	19,0000
Paid order to Louis Smith's account against Oteya.....	8,5000
	10,0000
To cash.....	7,5000
	18,0000

Received the above amount, fifteen hundred dollars, of David P. Smith, it being in part payment for my one-fifth interest in the Romero grant of land.

December 28, 1853.

FRANCISCO OTOYA.

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Exhibit B to dep. of Wm. Comstock.

March 9, 1854, Francisco Otoy to D. P. Smith, Dr.

To cattle and buggy by Jones.....	\$900 00
To three hundred dollars.....	300 00
	1,200 00

Received of D. P. Smith the above amount, twelve hundred dollars, it being in full of my one-fifth interest in the Romero grant of land.

FRANCISCO OTOYA.

Endorsed: Filed Oct. 25, 1858.

W. H. CHEVERS, *Clerk.*

Dep. of Wm. B. Rogers.

United States district court, northern district of California.

THE UNITED STATES }
vs. }
 INOCENCIO ROMERO *et als.* }

SAN FRANCISCO, Oct. 23, 1858.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came William B. Rogers, a witness produced on behalf of the claimant, in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: J. B. Crockett, for claimant.

Questions by claimants' attorney.

I am 32 years of age, and reside in Contra Costa county ; I am acquainted with Francisco Otoya and David Smith ; I have known Otoya about two years and a half and Smith longer.

I have conversed with Otoya about his having sold his interest in the Romero grant to Smith. He and I were talking about the changes that had taken place and about titles, &c. I asked him whether he had sold his interest in the Romero ranch to Smith ; he said he had. I asked him for how much ; he said three thousand dollars ; that part had been paid in money and part in cattle. I have seen him write a good deal ; I should think I would know it. I think the handwriting of the Exhibits A. & B. attached to the deposition of William Comstock is his.

W. B. ROGERS.

292 Subscribed and sworn to before me, this 23rd day of October, A. D. 1858.

CUTLER McALLISTER,
U. S. Com'r.

Endorsed : Filed Oct. 25th, 1858.

W. H. CHEEVER, *Clerk.*

Dep. of J. Shafer.

United States district court, northern district of California.

THE UNITED STATES }
vs. }
INNOCENCIO ROMERO, *et als.* }

SAN FRANCISCO, *Oct. 23rd*, 1858.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Josiah Shafer, a witness produced on behalf of the claimant, in case No. 304, being an appeal from the board of commissioners, to ascertain and settle the private land claims in the State of California, in case No. 654, on the docket of the said board of commissioners, and was duly sworn and testified as follows :

Present : J. B. Crockett, for claimant.

Questions by claimants' att'y.

293 I am 39 years of age ; I reside in Contra Costa county ; I am acquainted with David P. Smith and Francisco Ortoya ; I have known Francisco Ortoya since the spring of 1852 ; I knew Smith before that ; when I first knew Ortoya he lived on the Romero grant ; he moved off the Romero grant in 1853 ; David Smith moved into the same place.

Ortoya has frequently told me that he had sold his interest in the Romero grant to Smith.

I know of some payments that Smith made to him on account of the purchase money ; I helped to deliver some cattle ; I believe they were valued at about six hundred dollars.

I know that one store was indebted to Smith, and that Smith turned over this debt to Smith ; this debt was afterwards paid in cattle.

I have heard Smith and Ortega talking about the purchase ; I have heard Ortoya say frequently that he had got all his money for the purchase.

Smith has made improvements on the land ; I should think of the value of between three and four thousand dollars.

I understood Ortoya had gone to Central America ; he left the country somewhere about last June ; he had remained in Contra Costa till that time. I have seen him write, and I should think
294 that Exhibits A. & B. attached to the deposition of William Comstock were in his handwriting.

I have seen him write frequently ; I believe that Smith paid Ortoya three thousand dollars and over for the place ; I heard this from both Ortoya and Smith.

JOSIAH SHAFER.

Subscribed and sworn to before me this *this* 23rd October, A. D. 1858.

CUTLER McALLISTER,
U. S. Com'r.

Endorsed : Filed Oct. 25th, 1858.

W. H. CHEVERS, *Clerk.*

Dep. of James A. Forbes.

295 United States district court, northern district of California.

THE UNITED STATES, }
vs. }
INOCENCIO ROMERO *et al.* }

SAN FRANCISCO, *Nov'r 5th*, 1858.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the district of California, duly authorized to administer oaths, &c., &c., came James Alexander Forbes, a witness produced on behalf of the U. S. in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn and testified as follows :

Present : P. Della Torre, esq., U. S. dist. att'y, and J. B. Crocket, for claimants.

Questions by U. S. Dist. Att'y.

My name is James Alexander Forbes ; age 52, and I reside in Santa Clara. I am acquainted with the Romeros. I know nothing of my own knowledge with the respect of their asking a certain tract of land situated in what is now, I believe, in Contra Costa county, which
296 I had heard, in 1843 or 1844, he (Inocencio Romero) had peti-

tioned the governor for said land, lying between the lands of Moraga, Lorenzo or Bartolo Pacheco, the deceased William Welch.

In 1844 the deceased Welch applied to me to make out a petition for him to the governor, soliciting the final action of the governor in regard to the issuance of his (Welch) title to the tract of land which he was then occupying by permission of the alcalde of San José. I made out his petition to the governor, and also wrote a letter to that functionary in furtherance of the petition of Welch, whereupon he obtained his title.

(The original expediente in the case of William Welch is here exhibited to the witness.)

The certificate or the report of Antonio Maria Pico is in my handwriting.

The sketch or diseño was made by me. It is my handwriting. The body of the petition is in my handwriting. There is nothing more in that expediente in my handwriting.

(Document on page 440, Departmental State Papers, vol. 5, books 1, 2, 3, 4, 1840-'41-'42-'43-'44, from the archives from the U. S. surveyor's office for the State of California, is now shown to the witness.)

297 This is the letter that I have already testified to, which I wrote to Governor Micheltorena.

Paper marked exhibit A, J. E. G., is a correct translation. I made it myself. I am perfectly familiar with the Spanish language. I have spoken and written it 42 years.

At the time of writing that letter I was British vice-consul. I was intimate and on friendly terms with Governor Micheltorena.

Cross-examined.

I believe that Welch obtained the grant which is contained in that expediente. I do not know whether the land said to be granted to Romero is comprised within the tract which is granted to Welch. I am familiar with the lands in that locality. I have been over those lands several times. I could not state with precision that the land claimed by Romero conflicts with the land granted to Welch or not, as I do not know the locality of the claim of Romero.

Direct examination resumed.

What induced you to write that letter above referred to?

Ans. The representation of Welch, who informed me that Romero was endeavoring to get a grant of a portion of the lands of Welch, as is explained in the aforesaid letter to Gov. Micheltorena.

298 (J. B. Crocket, esq., for the claimants, objects to the answer as hearsay.)

JAS ALEX. FORBES.

Sworn to and subscribed before me, this 5th day of November, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

[Copy.—Translation.]

Translation of exhibit A, to dep. of J. A. Forbes.

PUEBLO DE SAN JOSÉ, *Feb. 9, 1844.*

MY VERY RESPECTED SIR: The bearer of this is Mr. William Welsh, a man who formerly enjoyed a moderate fortune and the favorable opinion of his acquaintances. He now finds himself reduced to a lamentable state of misfortune, caused by a long and incurable illness, which has deprived him also of the moral courage to bear up against his adversities, originating in his great losses and sacrifices in his ineffectual efforts for the acquisition of a rancho. His family, hitherto accustomed to an ample maintainance, are now compelled to labor personally yet honorably in the fields, to obtain the means of subsistence.

Mr. Welsh has been informed that a certain Mr. Romero has petitioned for a grant of the land that he Welsh has occupied during fourteen years, and as this is not the first attempt that has been made towards the same object, Mr. Welsh has asked of me to present to your excellency his petition, which I do with pleasure, in view of the unhappy situation to which the unfortunate family of Welsh would be reduced were they deprived of the poor tract of land that he has selected; and particularly, under the circumstances in which he is placed, being compelled to withdraw the few cattle that remain to him on the rancho of Mr. Martinez, in all the month of the ensuing April.

Poor Welsh goes (to Monterey) to solicit the grant of the land in question, and I can assure your excellency that he only asks justice.

I am, your excellency, with the most sincere sentiments of respect and affection, your most obedient servant,

JAMES FORBES.

Señor D. MANUEL MICHELTORENA.

Endorsed: Filed November 5th, 1858.

W. H. CHEVERS, *Clerk.*

333 *Exhibit, expediente of Wm. Welsh to dep. of J. A. Forbes.*

300 Expediente promovido por Dn. Guillermo Welsh en solicitud de el parajé q. se espresa.

Año de 1844.

(344.)

Jurisdiccion del Pueblo de S. José Guadalupe, año de 1834.

Espediente sobre el parage nombrado Las Juntas solicitado p^r.

GUILLERMO WELSH.

Sello tercero—dos reales.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

RAFAEL GONZALEZ.
FIGUEROA.

Sor. Com'te Gral y Gefe Supor. Polito. :

MONTEREY, Junio 1, de 1834.

301 De conformidad con los leyes de la materia informe el ayuntamiento, del Pueblo de San José Guadalupe, si el interesado en esta instancia obtiene los requisitos prevenidos para sea atendido en su solicitud: si el terreno que pretendo esta comprendido en las veinte leguas limitrofes ó diez litorales que espresa la ley de 18 de Agosto de 1824, si es de regadio temporal ó abrevadero, si pertenece á la propiedad de algun particular, corporacion, mision ó Pueblo, con todo lo demas, que se conveniente á ilustrar la materia, haciendo que el interesado presente.

A. V. T. el diseño del terreno que solicita y la carta de naturaleza que obtenga que se agregará á esta espediente. Evacu-

302 ado que sea pasará todo al

R. P. ministro de la mision de San José para que ponga lo q°. le ocurra sobre el particular.

El Sor. Don José Figueroa, general de brigada, comand^{te} general ynspector y gefe superior politico de la Alta California asi lo mandé decretó y firmo de que doy fé.

JOSÉ FIGUEROA.

PUEBLO DE SN. JOSÉ G.

20 de Octubre, de 1832 :

Se la concede al interesado el parage que pretende en calidad de prestado en la inteligencia qe. el el gobierno no lo hubiere á bien lo desocupara.

YGNO. PERALTA.

303 cuno en numero de quatrocientos cabezas, y no teniendo abso-
lutante. un terreno valdio donde ponerlo pa. tener la sub-
sistencia segura de mi familia, á lo qe. se agrega estar insol-

Guillermo Welh de nacion Yrlandes y avecindado en esta provincia hace trece años, casado con Maria Antonio Galindo natural del Prese. de S. Francisco V. S. con el respecto debido y conforme haya lugar en derecho parece y dice. Que haciendo como dos años q° se halla avecindo en el parage llamado Los Juntas como consta del documento q° respetuosam^{te} acompaño á V. S. y teniendo en el mar de mil cabezas en ganado Bacuno, su casa y siembras, ocurre á V. S. con el mayor respecto con el fin de qe. se digne confirmarle la propiedad de dho. sitio, p^r qe. p^r falta en parage pa. aumentar dho. ganado se le extravia mucho, temindo qe. andar vagando con el ganado qe. puso alli, envio á otro parage pa. qe. se le concedio este parage enteramte. p^r lo qe. suplico á V. S. rendidamte. se digne concederme como tengo pedido en al memorial presentado al alcalde del pueblo de Sn. José qe. á este acompaño. Por tanto pido y suplico tenga la dignacion de proveer, á mi favor como tan proponso qe. es á hacer felices los habitantes en este suelo en qe. recibire gracia y merced.

Monterey, 3 de Junio, de 1834.

SOR. GUILLERMO WELSH.

SOR ALCALDE CONSTITUCIONAL :
Julian Wil de nacion Yrlandes, casado con Ma. Anto. Galindo, natural del presidio de San Francisco ante V. con el devido respeto se presenta p^r medio de este escrito diciendo: que timiendo un piep^r medio de este gonalo Ba-

vente á causa de los muchos gastos qe. tube en la solicitud del terreno del Monte del Diablo en tiempo del govrn'o del Sr. Echeandia p^r. lo qe. solicito en calidad de prestado y h'ta la aprobacion del gefe nato de esta provincia, dos leguas en el parage blamado *Las Juntas*, asi al Norte, sitio qe. este baldio, teniendo de colindante al teniente retirado C. Ygno. Martinez distante de su terreno, como dos leguas p^r. tanto. A. V. suplico rendidamte. tenga en concideracion esta mi solicitud qe. con tanta necesidad pido pa. tener seguro estos mis cortos vienes, y pagar algunos creditos qe. tengo pendientes de resultas de los muchos gastos parados en solicitud del referido sitio del Monte del Diablo, esperando de su bondad herá propicia esta mi solicitud en qe. recibira y merced conformandome en todo con lo qe. tenga abien decretarme.

B. L. M. de V.

GUILLERMO WELL.

AGUSTIN V. ZAMORANO,
Sor. Alcalde Constitucional.

Certifico en debida forma, que la parte occidental del terreno llamado *Las Juntas*, ha sido ocupado por espacio de trece á catorce años, por el Sor D. Guillermo Welsh, y que nunca ha pertenecido á particular alguno. Sus limites del espresado terreno son, por el norte el Arroyo del Hambre, por el oriente, el Arroyo de las Nueces, que tambien lo divide por el sur del terreno del Sor Lorenzo Pacheco; y por el occidente colinda, con el Sor Moraga; y para los fines que conbengan al interesado, doy el presente certificado, á los 9 dias de Febrero de 1844, en el Pueblo de San José.

ANTONIO MA. PICO.

Selle cuarto dos reales.—Habilitado provisionalmente por la Aduana Maritima del Puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA G.

MICHELTORENA.

[SEAL.]

MONTEREY,
Feb'o 12 de 1844.
Ynf'e el S. Srio del Despacho
con presencia de los anteceden-
tes y pidiendo antes los q'e
crea necesario.
305 MICHELT'A.

EXMO. SEÑOR. Guillermo Sor : Guillermo Welsh, originario de la Yrlanda residente en este departamento hace veinte y tres años, casado con Mejicana y padre de ocho hijos. Ante V. E. respetuosamente expongo. Que hace quince años, solicite al

Sor Echandia, un terreno llamado Monte del Diablo, para la conservacion y aumento de mil y dos cientos cabezas de ganado mayor fruto de mi industria y una fortuna prospera. Se me dieron las mas bellas y lisongerass promesas, que me seria adjudicade el terreno espresado : mas despues de haber rrogado enormes gastos y afanes en cinco viages que emprendi desde este punto hasta San Diego, para obtener el titulo, tuve la mortificacion de ver que mi esperanzas pueron ilusorias, habiendo sido frustradas por las maquinaciones de personas interesadas.

EXMO.

[REC. CLXXX, D. T. 1862]—9

Cerciorado que habia trabajado y gastado en vano, me vi obligado á transportar, mi ganado de rancho en rancho, (a grandes espensas,) donde mejor podia resguar darse y en Octubre de 1832, solicite provisionalm^{te} al alcalde del Pueblo de San José parte del terreno llamado Las Juntas que como manifiesta el adjunto diseño, queda al occidente del terreno ocupado por Dña. Juana Sanchez y del Monte del Diablo.

El Sor. Alcalde atendió á mi solicitud, decretando á mi favor, y en seguida prosequi mi solicitud para la propiedad, al Sor. Figueroa, mas una enfermedad fortuita me impidio segun los tramites legales, pa. conseguir mi titulo, y aunque tuve interalos de alivio, las convulsiones politicas no daban lugar a verificarlo. Empecé la fabrica de una casa de adoves, en d'ho sitio; pero la suerte adversa me volvio á abatir en la enfermedad, mis bienes casi todos se dispersaron, y apenas puede poner en salvo el corto numero de cuatro cientos cabezas; los que entrequé á manos ajenas para su conservacion, y que actualmente existen en el rancho de D. Ygnacio Martinez mi casa participó en la general ruina y para colmo de mi desgraciada suerte, se ha tratado de despojarme del mencionado terreno de Las Juntas, unico asilo pa. mi poare familia.

Ocurro pues Exmo. Sor. en medio de mis infortunios á V. E. como recto defensor del desvalido; imploro señor, la poderoso intervencion de V. E. suplico rendidamente se digne de mirar propicia mi causa, concediendome el terreno (que he ocupado ya diez anos) en propiedad con arreglo al diseño que con otros documentos relativos á la materia, tengo el honor de acompañar. El terreno que solicito, tiene por limites hacia el norte el Arroyo del Hambre, por el oriente Arroyo de las Nueces; el sur y occidente terrenos del Sor. Lorenzo Pacheco y Joaquin Moraga: Todo es de abrevadero, y no tiene mas de un aguage permanente. Su mayor estension de norte á sur podrá ser tres leguas, y de oriente á poniente de media, á tres cuartos de legua.

Por tanto

A. V. E. respetuosamente suplico se digne de proveer como llevo pedido, en que recibire gracia y justicia. Pueblo de San José y Febrero 9 de 1844.

GUILLERMO WELSH.

SOR. GOBERNADOR: El terreno de Las Juntas fué prestado por el juez del Pueblo de Sn. José á Dn. Guillermo Welsh desde 20 de Octubre 832, y desde entonces lo ocupó con casa y bienes hasta el año de 838, qe. lo desocupo por hallarse enfermo segun ha justificado, y fue motivo tambien para qe. se paralisase el espedte. y promovio desde 9 de Junio de 834, para adquirir la propiedad del terreno ahora tiene temores de q. se lo quieren denunciar, y como quiere volverlo á ocupar indispensablemente dentro de dos meses por no tener donde poner su ganado, pide de la bondad de V. E. se digne concederle la propiedad que en mi concepto es juisto lo que pide, por ser honrado tener mucha familia y ser cierto los gastos que ha hecho para la ocupacion del.

308 (Here follows map, marked original, page 308.)

309 Sello quinto un real.—Habilitado provisionalmente por la Aduana Maritima del Puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

Terreno, y todo lo demas que espone en sus escritos.

Como el parage esta rodendo de arroyos conocidos, no puede perjudicar á mingun colindante, y como el juez de San José da su certificado en f'ha 9 del corrte. por esta razon no me ha parecido necesaria pasar les este espediente para que informen por lo espuesto el superior dicernimto. de V. E. resolvera lo que éncotrare por conveniente.

MONTEREY, *Febrero 19 de 1844.*

MAN'L JIMENO.

MONTEREY, *Febo. 12 de 1844.*

Espidasele el titulo con las condiciones de ley.

MICHELTA.

MONTEREY, *20 de Febo. de 1844.*

Vista la peticion con que da principio este los documentos é informes que preceden con todo lo demas que se tubo presente de

310 conformidad con las leyes y reglamtos. de la materia declaro á

Dn. Guillermo Welsh dueño del terreno nombrado Las Juntas, colindante con el Arroyo de las Nueces y con el del Ambre, sin perjudicar los linderos de D. Lorenzo Pacheco, el de Da. Juana Sanchez el de Don Ignacio Martinez, y el de D. Joaqn Moraga. Librese el correspondte. despacho en el que se pondran tres sitios de ganado mayor, tomese razon en el libro respectivo, y dirijase este espedte. á la Exma. Junta pa. su aprovacion. El Exmo Sr. Gral. Gobdor. del Departamento. asi lo mando, decreto y firmó.

Endorsed : Filed Nov. 5th, 1858.

W. H. CHEVERS, *Clerk.*

Translation of espediente of Wm. Welsh to dep. of J. A. Forbes.

SEÑOR COMM'G GEN'L AND SUP'R POLITICAL CHIEF :

Guillermo Welsh, Irish by birth, and residing in this province for thirteen years, married to Maria Antonia Galindo, native of the presidio of San Francisco, before your honor, with due respect and in form of law, appears and says, that it being about two years that he

has been residing in the place called Las Juntas, as proved by

311 the document which he respectfully annexes to this, and having therein more than a thousand head of neat cattle, a house and fields, he most respectfully applies to your honor for the purpose that you may be pleased to confirm to him, as his property, the said place ; as for the want of a location for the increase of the said cattle he has lost many, he having to go wandering after the cattle, which he located there, from place to place, until this was temporarily conceded to him.

Wherefore he humbly prays your honor will be pleased to grant it to him, as he has asked in the memorial presented to the alcalde of the town of San José and hereto annexed. For all of which I ask and pray your honor will have complacency to decree in my favor, your honor being so much inclined to make happy the inhabitants of this soil. And he will ever pray, &c.

MONTEREY, 9th June, 1834.

GUILLERMO WELSH.

Marginal decree.

MONTEREY, June 10, 1834.

In accordance with the laws on the matter, let the ayuntamiento of the town of San José Guadalupe report whether the party interested in this instance has the provided requisites for being attended to in his application; whether the tract of land that he asks for is
312 comprehended in the twenty boundary leagues or ten littoral ones which are expressed in the law of the 18th of August, 1824; whether it is irrigable, temporal, or pasture; whether it is private property or the property of any corporation, mission, or town, and any other matter that may illustrate the subject; causing the party to present a plan or map of the tract of land he solicits, and the letter of naturalization he may obtain, to be annexed to this expediente; after which it shall be passed over to the rev'd father, the minister of the mission of San José, in order that he may state what occurs to him on the subject.

The honorable José Figueroa, brigadier general, commanding general, inspector, and superior political chief of Upper California, thus ordered, decreed, and signed, to which I testify, &c.

JOSÉ FIGUEROA.

AGUSTIN V. TAMORANO, *Secretary.*

Petition.

To the constitutional alcalde:

Guillermo Welsh, Irish by birth, married to Maria Antonia Galindo, native of the presidio of San Francisco, before you with due respect appears by way of this writing, and says that, having a lot of neat cattle to the number of four hundred head, and absolutely
313 having no vacant place to keep them at for the sure subsistence of his family, to which added his being insolvent on account of the great expenses which he incurred in the application for the tract of land on the Monte del Diablo, at the time of the government of Señor Echandia; he therefore solicits (in the quality of a loan, and with the approbation of the legal chief of this province) two leagues in the place called Las Juntas towards the north, a place which is vacant, being bounded by the retired lieutenant citizen, Ignacio Martinez, distant from his tract about two leagues. Wherefore I humbly pray that you will take into consideration this my solicitation, which with so great necessity I ask, in order to secure my limited property and to pay some debts which I have outstanding, arisen from the

many expenses made in the application for the said tract of Monte del Diablo; hoping from your kindness you will regard propitiously this solicitation, by which he shall receive favor, and submit to the decree you may be please to issue on this case.

I kiss your hands.

GUILLERMO WELSH.

Marginal decree.

TOWN OF SAN JOSÉ G., 20th of October, 1832.

314 Is conceded to the party interested the place which he asks for, as a loan, with the understanding that should the government not approve it he shall quit the same.

IGNACIO PERALTA.

Certificate.

I certify in due form that the western part of the place called Las Juntas has been occupied for the space of from thirteen to fourteen years by one William Welsh, and that it has never belonged to any individual. The limits of the said place are: on the northward the Arroyo del Hambre, on the eastward the Arroyo de las Nueces, which also divides it on the southward from the place of Señor Lorenzo Pacheco, and on the westward it is bounded by Señor Moraga's; and for the purpose which may be convenient to the party interested, I give the present certificate this 9th day of February, 1844, at the town of San José.

ANTONIO MA. PICO.

Petition.

To his excellency:

William Welsh, native of Ireland, residing in this department twenty-three years, married to a Mexican woman, and father of eight children, before your excellency respectfully represents: That
 315 fifteen years ago I applied to Señor Echandia for a tract of land called Monte del Diablo, for the keeping and increase of one thousand two hundred head of large cattle, fruit of my industry and good fortune; that the most pleasing and flattering promises were given to me that the said tract of land would be adjudicated to me, but after having disbursed enormous expenses, and expended labor in five voyages which I made from this point to San Diego to obtain the title, I had the mortification to see that my hopes were illusory, having been frustrated through the machinations of interested persons. Assured that I had worked and made expenses in vain, I saw myself obliged to remove my cattle from rancho to rancho, (at great expense,) wherever I could best keep them; and in October, 1832, I applied provisionally to the alcalde of the town of San José for a part of the place called Las Juntas, which, as is shown in the accompanying map, lies on the west of the tract occupied by Doña Maria Sanchez, and of the Monte del Diablo. The señor alcalde took into consideration my application, decreeing it in my favor, and accordingly I applied

to Señor Figueroa for the grant in fee ; but a sudden sickness prevented me from pursuing the legal steps to obtain my title ;
 316 and although I was better occasionally, the political convulsions did not allow me to accomplish it. I commenced building an adobe house on the said place ; but through adverse fortune my sickness again returned upon me, my property was nearly all scattered, and I could scarcely save it to the small number of four hundred head, which I delivered to another party to take care of, and which now exist in the rancho of Don Ignacio Martinez. My house partook of the common ruin, and to complete my unhappy lot it has been attempted to take from me the said place, Las Juntas, the only asylum for my poor family. I resort, therefore, in the midst of my misfortunes, to your excellency, as the upright defender of the poor. I implore, sir, the powerful intervention of your excellency, and humbly pray you will be pleased to regard propitiously my cause, conceding to me the tract of land (which I have occupied already for ten years) in ownership according to the map, which, together with other documents relative to the matter, I have the honor to annex hereto. The tract of land which I ask for is bounded towards the north by the Arroyo del Hambre, on the east by the Arroyo de las Nueces, on the south and west by the lands of Señor Lorenzo
 317 Pacheco and Joaquin Moraga. It is all of pasture land, and has no more than one permanent spring. Its greatest extension from the north to the south may be three leagues, and from the east to the west from half a league to three quarters of a league. Wherefore I respectfully pray that your excellency will be pleased to decree as prayed for, wherefore I shall receive mercy and justice.

PUEBLO OF SAN JOSE, 9th February, 1844.

GUILLERMO WELSH.

Marginal decree.

MONTEREY, Feb'y 12, 1844.

Let the secretary of state report upon it in view of the foregoing, and asking for others that he may deem necessary.

MICHELTORENA.

Secretary's report.

SEÑOR GOVERNOR : The tract of Los Juntas was loaned by the judge of the town of San José to Don William Welsh, from the 20th of October, 1832, and after that he occupied it with a house and property until the year 1838, when he ceased to occupy it on account of his finding himself sick, as he has proved ; and that was the reason why the proceedings were stopped which he commenced on the 9th of
 318 June, 1834, to obtain the ownership of the tract. He enters fears now that some persons wish to denounce the same land, and as he desires to occupy it again within two months, not having anywhere to place his cattle, he asks from your kindness that your excellency will be pleased to concede to him the ownership ; and in my opinion what he asks for is according to justice, he being

an honest man, and having a large family, and it being true the expenses he has made for the occupation of the place and all other matters that he states in his representations. As the place is surrounded by known arroyos, he cannot injure any adjoining neighbors; and as the judge of San José has given his certificate bearing date the 9th instant, for this reason I do not think it necessary to pass this expediente to the adjoining neighbors that they may report on it. On this statement, from your superior discernment your excellency will resolve what you may find as convenient.

MANUEL JIMENO.

MONTEREY, *February* 19, 1844.

Decree.

Let the title be issued to him with the conditions of law.

MICHELTORENA.

MONTEREY, *Feb'y* 12, 1844.

319

Concession.

MONTEREY, *20th February*, 1844.

In view of the petition wherewith this begins, the foregoing documents and reports, with all other matters which have been represented, in conformity with the laws and regulations on the subject, I do declare Don William Welsh owner of the tract of land called Las Juntas, bounded by the Arroyo de las Nueces and by that of Del Hambre, without prejudice to the boundaries of Don Lorenzo Pacheco or that of Doña Juana Sanchez, or that of Don Ignacio Martinez, or to that of Don Joaquin Moraga. Let the proper patent be issued, wherein shall be put three sitios de ganado mayor, or three square leagues. Let it be entered in the proper book, and this expediente be directed to the most excellent assembly for its approbation.

The most excellent señor general, governor of the department, thus decreed and signed.

Endorsed: Filed Nov. 5th, 1858.

W. H. CHEVERS, *Clerk.*

320

Dep. of José Romero.

United States district court, northern district of California.

THE UNITED STATES
vs.
INOCENCIO ROMERO *et al.* }

SAN FRANCISCO, *Nov. 4th*, 1858.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the district court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came José Romero, a witness produced on behalf of the
, in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the

State of California, in case No. on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present: P. Della Torre, esq., U. S. dist. att'y, and J. B. Crockett esq., for claimants.

Questions by dist. atty.

What is your name, age, occupation, and place of residence?

Answer. My name is José Romero; 58 years old; ranchero; and I reside at Agua Caliente, near the mission of San José.

2nd question. Did you and Inocencio Romero and Mariano,
321 ever made an application to Governor Manuel Micheltorena for a concession of land?

Answer. Yes, sir.

3rd question. Where was the land situated?

Answer. In the Cañada de San Ramon para Las Juntas.

4th question. What proceedings were taken upon your petition?

Answer. They give us a decree to measure the lands situated between the ranchos Joaquin Moraga, Juban Wil, and Lorenzo Pacheco.

5th question. Did you ever have that land measured?

Answer. No, sir.

6th question. Did you obtain a grant of it from Governor Manuel Micheltorena?

Answer. No, sir. An order to measure the land.

7th question. Why was the land not measured?

Answer. Because the judge told me that he did not know how to measure the land.

8th question. Then you never received from Governor Man-
322 uel Micheltorena the final grant or titulo to the land that you petitioned for?

(Question objected to by counsel for claimant.)

The objection was not interposed before the witness gave his answer.

Answer. No, sir.

Cross-examined by E. B. Crockett, es q

Question. Who presented the petition to Micheltorena for the grant?

Ans. Inocencio Romero, my brother.

9th quest. In what year was this?

Ans. In 1844.

10th quest. Did you ever see the petition?

Ans. Yes; I saw it in the same year, 1844.

11th quest. Where, and was it before or after it was presented to Micheltorena?

Ans. I saw the petition after it was presented to Gov. Micheltorena and when the order came to measure the land.

12th quest. In whose possession did you see it?

323 Ans. I saw it in the possession of the alcalde, Guillermo Castro.

13th quest. Did you ever live upon the land?

Ans. A little while; only one sowing, in 1846.

14th quest. Did your brother Inocencio live upon the land; and if so, when did he first go there and when did he leave it?

Ans. Inocencio lived upon the land. I do not recollect when he first went there. He left when he sold out.

15th quest. Did he live upon the land before the petition was presented; and if so, how many years?

Ans. He did not live there before; he lived there afterwards.

16th quest. Can you read or write?

Ans. No, sir.

17th question. Were there any papers which accompanied the petition when you say you saw it in the hands of Castro, the alcalde?

Ans. No. I do not recollect. I saw only the order.

18th quest. What became of those papers which you saw in the hands?

324 Answer. They were left in the hands of the two alcaldes, Guillermo Castro and Antonio Maria Pico.

19th quest. Have you ever seen them since?

Answer. No, sir. My brother Inocencio took charge of that business.

20th quest. Who had the management of the business concerning of obtaining the title papers of the ranch? Was it you or your brother Inocencio?

Answer. Inocencio had the charge of all the business.

21st quest. Where did you live in 1843?

Ans. In the Pueblo—the Pueblo of San José.

22nd quest. How far was that from the ranch in question?

Ans. I believe it is about 18 leagues, more or less.

23rd quest. Where did you live in 1844?

Ans. In San Lorenzo.

24th quest. Were you on the land in controversy in 1843?

325 Ans. No. I was not there permanently, but I went there to see it.

25th quest. Did you ever see the petition for the grant, and the order for the measurement of the land, at any other time than when you saw it in the hands of Castro, as you have stated?

Answer. I never saw it except this day on file in this case.

26th quest. Who showed it to you this day?

Answer. The district attorney.

27th quest. How do you know that the paper that you saw to-day is the same paper which you saw in the hands of Castro?

Answer. For what the words of the paper say.

28th quest. Do you recollect what the paper that you saw in Castro's hands contained? and if so state it.

Answer. I do recollect: Measure the land between the colindantes Joaquin Moraga, Julian Wil, and Lorenzo Pacheco.

29th quest. Is that all that the paper contained?

Answer. No, sir. "To concede it to the petitioners," were also on the paper.

326 30th quest. State all you can remember of the contents of the paper; give the words of it as near as you can remember.

(Objected to by the district attorney, because these papers have been put in evidence by the claimants themselves, and are the best evidence of their own contents.)

Answer. I do not remember no more than what I have said. What interested me the most was the order from the governor.

31st quest. Where did your brother Inocencio resided in 1844?

Ans. I believe he was living at the mission of San José. He had no house. He was living some time on the rancho of José Maria Amador, sometimes at the Pueblo. He was sickly.

32nd quest. Did he not live upon the ranch petitioned for by you and your brothers in 1844?

Ans. No, sir; it appears to me that it was either in 1845, 1846, or 1847, that he lived on the ranch; I do not recollect exactly.

327 33rd quest. What steps, if any, were taken for the measurement of the land of the rancho?

Ans. There were no steps taken, as the judge could not measure.

34th quest. Did you apply to the judge to measure it, and did he refuse to measure it?

Answer. No, sir; the order came to him; he did not measure, for did not feel willing so to do.

35th quest. Do you know whether any other person petitioned for or claimed this rancho; and if so, who?

Ans. No, sir. Yes, sir; Francisco Soto claimed it, but he had no papers.

36th quest. Were the lands of this rancho embraced in any grant to any other person, as far as you know, or were they claimed by any one except Francisco Soto?

Answer. No, sir; nothing from any other person.

37th quest. Did you ever have a suit with Domingo Peralta before the alcalde about this ranch?

Answer. No, sir.

38th Quest. Did your brother Inocencio ever had such a suit?

328 Answer. I do not know.

39th quest. What became of your interest in the ranch?

Answer. I sold it to Negro Garcia in 1847 or 1848; I do not recollect exactly when.

40th quest. Did you sell it to him before or after the Americans came into the country?

Ans. Before.

41st quest. Did your brother Inocencio build a house upon the rancho; and if so, in what year?

Answer. I believe he did build a house there in 1845 or 1846; I do not recollect exactly when. I did not live there with him, so that I do not know.

42nd quest. Are you certain that he did build the house there in 1844?

Ans. I am certain that he did not.

43rd quest. Did he have any cattle upon the land in 1844?

Ans. No, sir.

44th quest. Did he have any upon it in 1845?

329 Ans. I do not know.

45th quest. Would you not have known it if he had?

Ans. I cannot answer as to the year 1845. He had cattle there. I do not know if he had any; he might have had and I should not have known it.

46th quest. Do you know whether your brother Inocencio went to Monterey to see about getting the title paper for the ranch?

Answer. Yes, sir; I know.

47th quest. In what year did he go?

Ans. In 1844.

48th quest. Was he at Monterey afterwards?

Ans. I do not know.

49th quest. Were you and your brother living at the same place in 1844 and 1845?

Answer. No, sir.

50th quest. How often did you see him during those two years, as far as you can remember?

Ans. I do not remember.

330 51st quest. Did you see him as often as 10 times during those two years?

Answer. I do not remember if I saw him during those two years, because he lived away from the Pueblo. Two or three years passes without we seeing each other.

52nd quest. Were you upon this ranch in 1844 or 1845 at all?

Answer. I was not there in 1844 or 1845, and not before 1846, excepting in 1843.

53rd quest. Had Inocencio a house on the ranch when you were there in 1846?

Answer. No, sir.

54th quest. Had he any cattle upon the ranch then?

Answer. I do not know; he might have had. I never lived on the rancho.

55th quest. Where did Inocencio live in 1846?

Ans. I do not know where he lived; he could know.

56th quest. How long did you remained on the rancho in 1846?

331 Ans. I do not tell you that I never lived on that ranch; no one can say that I did.

57th quest. Were you ever upon the ranch at all since 1843?

Answer. I never was there since 1843. I went in that year to see the land to petition for it. In 1846 I passed over it.

58th quest. Who requested you to come here to testify in this case?

Ans. The district attorney.

59th quest. Did you call to see the district attorney?

Answer. I presented myself to the dist. att'y when he sent for me.

Examination adjourned until to-morrow, at 10 o'clock a. m., Nov. 5th, 1858.

SAN FRANCISCO, *November 5th*, 1858.

Present: P. Della Torre, esq., U. S. dist. att'y, and E. B. Crockett, esq., for claimants.

60th quest. Who informed you that the dist. att'y wished to see you in respect to your testimony in this case?

332 Ans. Mr. Cipriano.

61st quest. What did he say to you when he applied to you to come and see the dist. att'y? State all he said.

Answer. He told me that the district att'y had sent for me; that I could be paid for my trouble and expense.

62nd quest. What did he tell you the dist. att'y wished to see you for?

Ans. He did not tell me what it was for.

63rd quest. Did you have any conversation with him (Cipriano) in respect to the title to this ranch?

Ans. No, sir.

64th quest. Had you before then at any time conversed with him on that subject?

Ans. No, sir.

65th quest. Did he never ask you at any time what you knew about the title to the ranch?

Ans. He never did.

333 66th quest. Has he said anything to you since your deposition has commenced in respect to your testimony?

Answer. No, sir.

67th quest. Have you ever had any conversation with Mr. Horace W. Carpentier in respect to this title?

Answer. No, sir.

68th quest. Did not Mr. Carpentier, some time ago, apply to you to purchase your interest in the ranch?

Answer. Yes, sir.

69th quest. What conversation passed between you at that time? State fully all what was said by both of you.

(Question objected to by the dist. atty. as being palpably irrelevant, seeking to give in evidence conversation between the witness and a third person not a party to the suit nor in any way connected with it.)

Answer. He told me he wanted to buy my rights or right in it; and I told him that I did not know that I had any right in

334 it; that if he knew that I had a right in it, that we would make a bargain.

70th quest. Did he ask you anything about the title which you got from the governor?

Answer. I do not remember.

71st quest. Did you tell him about the papers that you saw in the hands of Castro, the alcalde of which you have spoken?

Answer. I do not remember whether or not I said anything about that to him.

72nd quest. How long ago was it that Carpenter offered to buy your interest?

Answer. I do not remember when it was, but it is a considerable length of time.

73rd quest. Since that time have you had any conversation with anybody about the title before you were told that the dist. att'y wished to see you? If so, with whom?

Answer. No, sir.

74th quest. Had your brother Inocencio have a family in 1844, 1845, and 1846 ; and if so, where was his family in those years?

335 Ans. He had a family in those years. In the year 1844, I think, he and his family was in San José, where he was then sick. The year 1845 they were at the rancho in controversy in this suit. I think they were there in the year 1846 also. That was his only place of residence. I do not know this of my own knowledge, for I lived in a different part of the country.

75th quest. As your brother Inocencio was attending to the business of procuring the title to the rancho, and as you have testified that you did not see him in the years 1844 and 1845, how do you know that he did not procure the final title, or do you know that he did not?

Ans. Because it has not appeared. Because I have not seen it. I had nothing to do with matters relating to papers of any kind.

76th quest. State whether or not you had any information, after you saw the papers in the hands of Castro, that a final title had issued from the government. State any information you had on that subject.

336 Ans. I heard that a title had issue from the government, but I never saw it. I heard of it, but I had no interest in the matter at all.

77th quest. Had you sold your interest in the ranch to Garcia before you heard of the issuing of the title?

Ans. I sold it afterwards.

78th quest. Why did you feel no interest in inquiring that the title had issue?

Ans. We had no title at all ; we had an order for the survey of the land. I felt no interest in it because I sold whatever right I had in it.

79th quest. Had you not sold your interest to Garcia before you heard that the title had issue, and was not that the reason why you did not enquire into it?

Ans. I sold my interest to Garcia after I heard that the title had been made.

80th quest. In what year was it that you heard of the grant having been made?

Ans. I do not remember when. It was an order, not a title.

337 81st quest. By whom were you told about it?

Ans. I remember of having heard of it, but no person never told me particularly about it ; I heard it spoken of among other persons.

82nd quest. Why did you not inquire of your brother Inocencio about it?

Ans. Why should I ask him? He lived in one place and I in another ; he did not visit me, nor did I visit him.

83rd quest. State all your reasons for believing that the final title did not issue.

Ans. I have no other than that I have not seen it.

84th quest. Did you make an affidavit or deposition which is on file in this cause?

Ans. Yes, sir.

85th quest. Look at the paper now shown you purporting to be your deposition, on file on the 21st Feb'y, 1857, and state whether that is the paper which you signed and to which you refer.

Ans. I know what it is; it is the same paper.

Direct examination resumed.

338 86th quest. Do you remember talking with the dist. att'y on the subject of this claim, and where and on what occasion did that conversation take place?

Ans. Yes; it was in his office.

87th quest. Why did you come to the city on that occasion?

Ans. I came here to give testimony in relation to the New Almaden mine.

88th quest. Do you remember the affidavit before referred to in the cross-examination, and who requested you to make it?

Ans. I do remember it; I made it at the request of Mr. Campbell; he came to me about it in a company with Mr. David P. Smith.

89th quest. Why did they say to you when they asked you to make this affidavit?

Ans. They asked me if it was true that I had sold my right to Garcia and my brother Miguel; and I do not remember whether or not they said anything more to me.

90th quest. Have you now any or what claim or interest in
339 this ranch?

Ans. I do not believe I will get anything; I consider myself as having no interest in it; I cannot tell; I may have an interest in it.

Cross-examination resumed.

91st quest. How can you have an interest in it if you have sold all your right and interest in it to Garcia?

Ans. I did sell; I have no right whatever; but when the title is finally passed upon we shall see whether there is anything coming to me or not.

his
JOSÉ + ROMERO.
mark.

Sworn to and subscribed before me this 5th day of November, A. D. 1858.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed Nov'r 5th, 1858.

W. H. CHEVERS, *Clerk.*

340

Notice of testimony.

In the district court of the United States for the northern district of California, *ss* :

INOCENCIO ROMERO *et al.* }
vs.
 THE UNITED STATES. }

To Peter Della Torre, esq., U. S. district attorney :

You will please take notice that the deposition of Mariano Romero, a witness for the claimants in this cause, will be taken before W. H. Chevers, esq., United States commissioner, at his office, in the city of San Francisco, on Monday, the 22nd day of November instant, at 2 o'clock p. m. of that day, and proceeded with until completed.

Dated San Francisco, November 16th, 1858.

Yours, &c.,

CROCKETT & CRITTENDEN,
Attorneys for Claimants.

NORTHERN DISTRICT OF CALIFORNIA, *ss* :

Wilfred W. Wiggins, being duly sworn, says tha he is clerk of the attorneys for the claimants in the within entitled cause ; that on the 16th day of November, 1858, he served a copy of the within notice

on P. Della Torre, esq., U. S. district attorney, by leaving
 341 said copy in said Della Torre's office with his clerk therein.

WD. W. WIGGINS.

Subscribed and sworn to Nov'r 22nd, 1858, before me.

W. H. CHEVERS,
U. S. Comm'r.

Dep. of M. Romero.

United States district court, northern district of California.

THE UNITED STATES }
ads.
 INOCENCIO ROMERO. }

SAN FRANCISCO, *Nov'r 22nd*, 1858.

On this day, before W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Mariano Romero, a witness produced on behalf of the claimants in case No. 304, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 654 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by John Argos, a sworn interpreter.

Present: Mr. Crockett, of counsel for the claimant.

What is your name, age, and place of residence?

Answer. Mariano Romero; am 55 years of age; and reside in Juana Briones ranch, in San Mateo county, Cal.?

2nd. Are you acquainted with the tract of land called the Romero rancho, in Contra Costa county, Cal.?

Answer. I do.

3rd. Who petitioned Governor Micheltorena for a grant of the said rancho? State all you know in relation to the said petition.

Answer. My brothers Inocencio, José, and myself petitioned for the grant. Inocencio presented the petition to the governor, and the governor then enquired of the judge in San José whether they had sufficient motives for services rendered in order that such concession be made, and it was reported favorably of to the governor. The judge or authorities of San José reported favorably.

4th. State whether any papers were issued by the governor
343 after the return of the informe.

Answer. Yes, sir. These papers were given me, and I sent them by Francisco Arce to my brother Inocencio.

5th. State whether or not those papers were the final title, or the expediente containing the order of the governor to put you and your brothers in possession.

Answer. They were the papers containing the order of Micheltorena giving us the possession of the land.

6th. Have you any information in respect to the issuing of the final title? Do you know whether or not the final title issued after the time that you received the order for the possession?

Answer. I knew from what Arce told me that the final title has issued, for he told me so. He told me in 1844 or 1845; I don't remember which.

7th. Where did you reside in 1844, and from thence up to within the last two or three months?

Answer. I resided in Monterey in 1844, and ever since then until within the past two or three months, when I commenced to
344 live on Briones ranch.

8th. Where did your brothers Inocencio and José live in 1844, and for some years thereafter?

Answer. Inocencio, in 1844, lived on the Romero ranch, and until he sold his interest in it, and then he moved to the Juana Briones ranch, and José lived somewhere about Higuera ranch, in Santa Clara county, in 1844, and since thence at Lomás Pacheco's ranch, in Alameda county, and now at the present time at the Hot Springs

9th. Who had the management of the business relating to the procuring of the title papers to the ranch?

Answer. My brother Inocencio.

10th. How often, if at all, did you see your brother Inocencio from 1844 to 1850?

Answer. I did not see him from 1844 until 1852.

11th. Have you any interest in the Romero rancho; and if not, when, and to whom did you dispose of it?

345 Answer. I have not. I sold my interest in 1852 to Mr. Campbell.

his
MARIANO + ROMERO.
mark.

Sworn to and subscribed, Nov'r 22nd, 1858, before me.
W. H. CHEVERS,
U. S. Comm'r.

Endorsed : Filed Nov. 22nd, 1858.
W. H. CHEVERS, *Clerk.*

Affidavit of E. A. Lawrence.

In the dist. court of the United States for the northern dist. of California.

THE UNITED STATES	}	No. 304.
<i>vs.</i>		
INOCENCIO ROMERO <i>et al.</i>		

E. A. Lawrence, being duly sworn, deposes that the transcript of the record in the above cause from the United States land commission was filed in this court on the 23rd day of October, 1855, and on the 23rd day of March, 1857, an order was made by the court that the proofs be closed and the cause submitted on the 30th day of the same month. On the 16th Sept., 1857, an opinion in the cause was
346 filed by the said judge, rejecting the claim. On the 20 Nov., 1857, a motion was made by the claimants, on affidavits, to open the decree for further proofs ; and on the 5th Dec., 1857, the motion was sustained and a rehearing granted. On the 10th July, 1858, the cause was argued and submitted. On the 14th October, 1858, an order was made allowing the names of the real claimants to be substituted in place of those who had sold and conveyed their interests since the original petition was filed, and also allowing either party to take further proofs. The last depositions taken on behalf of the United States were filed on the 5th November last, after which the claimants took a deposition on the 22nd Nov'r, since which time no proof has been taken on either side.

The foregoing are the facts as they appear from the minutes of the clerk ; and deponent further states that several months ago the district att'y served a notice on the opposite counsel that several depositions would be taken on behalf of the government on a day named in said notice ; but though the witnesses were present, the district attorney declined to take their depositions, and notified this deponent
347 verbally that the government would take no further proofs, and that he was ready to submit the cause.

E. A. LAWRENCE.

Sworn to and subscribed before me March 15th, 1859.
W. H. CHEVERS, *U. S. Com.*

Endorsed : Filed March 15th, 1859.
W. H. CHEVERS, *Clerk.*

Deed of I. Romero and wife, to A. J. Tice.

This indenture, made and entered into this ninth (9th) day of October, in the year eighteen hundred and fifty-eight, by and between *Inocencio Romero* and *Maria Encarnacion Miranda de Romero*, his wife, of the county of Santa Clara, in the State of California, parties of the first part, and *Andrew Jackson Tice*, of the city and county of San Francisco, in said State, party of the second part, witnesseth :

That whereas the said parties of the first part, on or about the 6th day of December, A. D. 1853, by their deed of that date, and recorded in the office of the county recorder of the county of Contra Costa, in volume 3, book of land titles, page 488, conveyed to Domingo Pujol and Francisco Sanjurjo the certain real estate hereinafter particularly described. And afterwards, to wit, on or 348 about the 14th day of February, A. D. 1855, the said Pujol and Sanjurjo, by their deed of that date, and recorded in the office of the county recorder of the said county of Contra Costa, in "book of deeds, volume 4, page 278," conveyed the said real estate to James Wm. Tice; and afterwards, to wit, on or about the 8th day of August, A. D. 1855, the said James Wm. Tice, by his deed of that date, and recorded in the office of the county recorder of the said county of Contra Costa in "book 4 of deeds, on pages 363, 364, and 365," conveyed the said real estate to the party hereto of the second part; and whereas it is believed that the said first-mentioned deed from these parties of the first part to the said Pujol and Sanjurjo is defective in its execution or acknowledgment, and the said parties of the first part are desirous of curing such defect:

Now, therefore, in consideration of the premises and of the sum of one dollar to them in hand paid by said party of the second part, the receipt of which is hereby acknowledged, the said parties of the first part do bargain, grant, sell, convey, and release unto said party of the second part, and to his heirs and assigns, the real estate described as follows, to wit:

349 All the undivided one-third of the lands and rancho in said Contra Costa county and State aforesaid, being the same lands and rancho granted to the parties of the first part and his two brothers, José Romero and Mariano Romero, by Governor Micheltorena, in the year eighteen hundred and forty-four, and being also the same lands and Rancho the claims for which was, at the date of the said first-named deed, to wit, on the said 6th day of December, A. D. 1853, number six hundred and fifty-four (No. 654) on the docket of the board of United States land commissioners appointed to ascertain and settle the private land claims in California, reference being had to the papers and proofs on file in said case for a more particular description of the lands and premises hereby intended to be conveyed.

The said parties of the first part retaining and reserving to themselves, however, all the covenants and stipulations contained in the said original deed of the said premises to said Pujol and Sanjurjo, the sole object and intent of this instrument being to render the said first-

mentioned deed regular, and in all respects complete and without defect as to execution or acknowledgment.

To have and to hold the same, together with all and singular the tenements, hereditaments, rights, privileges, and appurtenances thereunto belonging, or in anywise appertaining unto the said
350 party of the second part, and to his heirs and assigns, forever.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

INOCENCIO ^{his} + ROMERO. [SEAL.]
mark.

MARIA ENCARNACION MIRANDA DE ROMERO. ^{her} + [SEAL.]
mark.

Executed in the presence of—

J. W. TICE.

B. S. LATROP.

Witness to signature of Maria Encarnacion Miranda de Romero—

L. C. WITTENMEYER.

N. B. SMITH.

STATE OF CALIFORNIA,

County of San Mateo:

On this 9th day of October, A. D. one thousand eight hundred and fifty-eight, before me, B. S. Latrop, county clerk in and for said county, personally appeared Inocencio Romero, to me personally known to be the individual described in and who executed the annexed instrument, and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my
351 [SEAL.] official seal the day and year first above written.

B. L. LATROP, *County Clerk.*

Recorded Oct. 12th, 1858, at 11 o'clock a. m., in book 7 of deeds, pages 30, 31, and 32, records of Contra Costa, county of California.

L. C. WITTENMEYER,

County Recorder.

STATE OF CALIFORNIA,

County of Contra Costa, ss :

On this eleventh day of October, A. D. one thousand eight hundred and fifty-eight, before me, L. C. Wittenmeyer, county clerk and clerk of the county court in and for the aforesaid county, personally appeared the within named Maria Encarnacion Miranda de Romero, satisfactorily proven to me to be the wife of Inocencio Romero by the testimony of N. B. Smith, a credible and competent witness by me duly sworn for that purpose, and personally known to me to be the person described in and who executed the annexed instrument, and the said Maria Encarnacion Miranda de Romero, wife of Inocencio Romero aforesaid, was by me duly made acquainted with the contents

of the annexed instrument, and acknowledged to me, on an examination by me had apart from, separate, and without the hearing
 352 of her said husband, that she executed the same freely and voluntarily for the uses and purposes therein mentioned, without fear, compulsion, or under influence of her said husband, and that she did not wish to retract the execution of the same.

Witness my hand and the seal of the county court of Contra Costa
 [SEAL.] county affixed the day and year in this certificate first above written.

L. C. WITTENMEYER,
County Clerk.

Endorsed: Filed for record, at request of A. J. Tice, October 11th, 1858, at 3½ o'clock p. m.

L. C. WITTENMEYER,
County Recorder.

Filed March 18th, 1859.

W. H. CHEVERS, *Clerk.*

Deed from Romero and wife to Pujol and Sanjurjo.

This indenture, made this twenty-sixth day of December, A. D. one thousand eight hundred and fifty-three, between Inocencio Romero and Maria Encarnacion Miranda de Romero, his wife, both of Contra Costa county, in the State of California, parties of the first part, and

Domingo Pujol and Francisco Sanjurjo, of the city and county
 353 of San Francisco, in the said State of California, parties of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of (\$5,325) five thousand three hundred and twenty-five dollars, lawful money of the United States of America, to him in hand paid by the said parties of the second part at or before the unseling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, remise, and conveyed, and by these presents do grant, bargain, sell, release, remise, and convey, unto the said parties of the second part, and to their heirs or assigns forever, all the undivided one-third of the lands and rancho in said Contra Costa county and State aforesaid, being the same lands and rancho granted to the parties of the first part and his two brothers, José Romero and Mariano Romero, by Gov. Micheltorena, in the year 1844, and being also the same lands and rancho for which is now number 654, on the docket of the board of U. S. land commissioners, appointed to ascertain and settle private land claims in California, reference being had to the papers and proofs on file on said case for a more particular description of
 354 the lands and premises hereby intended to be conveyed.

And it is herein expressly understood and reserved by the parties of the first part, and assented to agreed by the parties of the second part, that in the event the said lands and rancho shall be hereafter confirmed by the said board of U. S. land commissioners, then the said parties of the second part, their heirs and assigns, shall pay to the parties of the first part the further consideration of (3,000) three thousand dallars.

And it is herein further provided and mutually understood between the parties to these presents that this conveyance is made subject to all sales of lands heretofor made by the parties of the first part, the price or consideration for which has not being paid, shall be equally divided between the parties of the first part and the parties of the second part, their heirs or assigns, together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: to have and
 355 to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs or assigns, forever.

'And the said parties of the first part, for themselves, their heirs and assigns, do hereby covenant and agree to and with the said parties of the second part, their heirs, executors, administrators and assigns to warrant and forever defend the premises hereby granted against the act or acts, claims or demands of themselves, the said parties of the first part, their heirs or assigns, or any other person or persons claiming or to claim the same by, through, or under him, them, or either of them.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

his
 INOCENCIO + ROMERO.
 mark.

her
 MARIA ENCARNACION MIRANDA + DE ROMERO.
 mark.

Signed, sealed, and delivered in the presence of—

GEO. M. JONES.

JUAN MANSO.

Then personally appeared before me the within named Inocencio Romero and acknowledged that he signed the within instru-
 356 ment of his own free will, and for the purposes herein named.

Also Maria Encarnacion Miranda de Romero, being by me examined by a sworn interpreter separate and apart from her husband, acknowledged that she signs it of her own free will and accord, without fear or compulsion from her husband.

GEO. M. JONES,
*Justice of the Peace for Martinez Township,
 Contra Costa county, State of California.*

Recorded volume 3 book of land titles, page 488; recorded in the Contra Costa county the 28th of December, 1853, 8 o'clock a. m.

THOMAS H. BROWN,
County Recorder.

Received for record, at request of grantee, 26th Dec., 1853, at 5 p. m. Recorded the 28th Dec. 1853, at 8 o'clock a. m.

THOMAS H. BROWN,
County Recorder.

STATE OF CALIFORNIA,
County of Contra Costa, ss:

I, L. C. Wittenmyer, county clerk and ex officio county
 357 recorder in and for Contra Costa county, do hereby certify
 that the foregoing is a true, full, and correct copy of an in-
 strument now of record in my office, in vol. 3 of deeds, on pages
 488, 489 and 490.

Witness my hand and seal of the county recorder of said
 [SEAL.] county this 9th day of September, A. D. 1858.

L. C. WITTENMEYER,
County Recorder.

Endorsed : Filed March 18th, 1859.

W. H. CHEVERS, *Clerk.*

Deed from Pujol and Sanjurjo to J. W. Tice.

This indenture, made the fourteenth day of February, in the year
 one thousand eight hundred and fifty-five, between Domingo Pujol
 and Francisco Sanjurjo, both of the city and county of San Francisco,
 State of California, parties of the first part, and James Wm. Tice, of
 the same place, party of the second part, witnesseth :

That the said parties of the first part, for and in considera-
 tion of the sum of \$8,000, (eight thousand dollars,) lawful money
 of the United States of America, to them in hand paid by
 358 the said party of the second part at or before the ensealing
 and delivery of these presents, the receipt whereof is here-
 by acknowledged, have granted, sold, remised, and conveyed, and
 by these presents do grant, bargain, sell, release, remise and
 convey, unto the said party of the second part, and to his heirs and as-
 signs forever, all the undivided one-third of the lands and rancho in
 Contra Costa county, State of California, being the same undivided
 one-third bought of Inocencio Romero and his wife the sixth day of
 December, one thousand eight hundred and fifty-three, by the
 parties of the first part. Said undivided one-third being part of the
 same lands and rancho granted to said Romero and his two brothers,
 José Romero and Mariano Romero, by Micholterena, in the year
 (1844) one thousand eight hundred and forty-four ; and being also
 the same lands and rancho the claim for which is now number (654)
 six hundred and fifty-four on the docket of the board of U. S. land
 commissioners appointed to ascertain and settle private land claims
 in California, reference being had to the papers and proofs on file in
 said case for a more particular description of the lands and
 359 premises hereby intended to be conveyed. And it is herein
 expressly understood and reserved by the parties of the first
 part, and assented to and agreed by the party of the second part,
 that in the event the said lands and rancho shall be hereafter con-
 firmed by said board of U. S. land commissioners, then the said party
 of the second part, their heirs and assigns, shall pay to the parties of
 the first part the further consideration of (\$3,000) three thousand dol-
 lars.

And it is herein further provided and mutually understood between the parties to these presents that this conveyance is made subject to all sales of lands made by Inocencio Romero before said Romero sold said undivided one-third to the parties of the first part; the price or consideration of which sales that has not been paid shall be equally divided between the parties of the first part and the party of the second part, their heirs and assigns.

And the said parties of the first part, for themselves, their heirs and assigns, do hereby covenant and agree to and with the said party of the second part, their heirs, executors, administrators, and assigns, to warrant and forever defend the premises hereby granted, the act or acts, claims, and demands of themselves, the said parties of the
 360 first part, their heirs and assigns, or any other persons claiming or to claim the same by, through, or under them, or either of them; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

F. SANJURJO. [SEAL.]
 DOMINGO PUJOL. [SEAL.]

Signed, sealed, and delivered in the presence of Jos. W. FINLEY, witness to the signature of F. Sanjurjo, and also for the signature of Domingo Pujol.

STATE OF CALIFORNIA,

County of San Francisco, ss.:

361 On this sixteenth day of February, A. D. one thousand eight hundred and fifty-five, before me, Jos. W. Finley, a notary public in and for said county, personally appeared Francisco Sanjurjo and Domingo Pujol, personally known to me to be the individuals described in and who executed the foregoing conveyance, and severally acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed
 [SEAL.] my official seal, in the county aforesaid, the day and year first above written.

JOS. W. FINLEY, *Notary Public.*

Recorded vol. 4, B deeds, Contra Costa county, page 278 to 280, 24th February, 1855, at 6 p. m.

THOS. H. BROWN,
 By C. BREWERS.

Endorsed: Filed March 18, 1859.

W. H. CHEVERS, *Clerk.*

362 *Certified copy of deed from J. W. Tice to A. J. Tice.*

This indenture, made the (8th) eighth day of August, in the year of our Lord one thousand eight hundred and fifty-five, between James William Tice, parties of the first part, and Andrew Jackson Tice, parties of the second part, both parties being residents of the county of Contra Costa and State of California, witnesseth: That the said parties of the first part, for and in consideration of the sum of (\$8,000) eight thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents do remise, release, and quitclaim, unto the said party of the second part, and to his heirs and assigns, forever, all the undivided one-third of the lands and rancho in Contra Costa county, State of California, being the same undivided one-third bought of Domingo Pujol and Francisco Sanjurjo on the fourteenth day of February, A. D. one thousand eight hundred and fifty-five, by the parties of the first part, said undivided one-third being the equal undivided one-third

363 of all that certain grant or parcel of land granted to Inocencio Romero and his two brothers, José Romero and Mariano Romero, by Micheltorena, in the year (1844) one thousand eight hundred and forty-four, and being also the same land and rancho, the claim for which is now numbered (654) six hundred and fifty-four on the docket of the board of United States land commissioners appointed to ascertain and settle private land claims in California, reference being had to the papers and proofs on file in said case for a more particular description of the lands and premises hereby intended to be conveyed; and it is herein expressly understood and reserved by the parties of the first part, and assented to and agreed by the party of the second part, that in the event the said lands and rancho shall be hereafter finally confirmed by the government of the United States, then the said party of the second part, his heirs and assigns, shall pay to the party of the first part the further consideration of three thousand dollars; and it is herein further provided and mutually understood between the parties to these presents that this conveyance is made subject to all sales of lands made by Inocencio Romero before the said Inocencio Romero sold said lands to Domingo Pujol and

Francisco Sanjurjo, and the price or consideration of which

364 sales has not been paid, shall be paid over to the said A.

Jackson Tice, the party of the second part, or that part of the same that would have been due and payable to the said James W. Tice had he remained the owner of said rancho or land and this deed never had been executed, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances: to have and to hold and *and* singular

the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his heirs and assigns, forever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

JAMES W. TICE. [SEAL.]

Signed, sealed, and delivered in the presence of—

GEO. F. WORTH.

365 STATE OF CALIFORNIA,

County of Contra Costa, ss :

On this 14th day of August, one thousand eight hundred and fifty-five, before me, Geo. F. Worth, a notary public in and for said county, personally appeared James W. Tice, known to me to be the undivided described in and who executed the foregoing conveyance, and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal in the county aforesaid the day and year first above written.

GEO. F. WORTH,
Notary Public.

The foregoing instrument was filed and recorded, at request of A. J. Tice, August 14th, 1855, at 45 minutes past one o'clock p. m. In the original the words "of the first," in 3rd line; the words "of the second part," in 6th line; the words "and previous," in 34th line; the words "and the said party of the," in the 38th line, are erased.

THOMAS H. BROWN,

366

Co. Recorder.

STATE OF CALIFORNIA,

County of Contra Costa, ss :

I, L. C. Wittenmeyer, county recorder ex officio in and for the aforesaid county, do hereby certify that the foregoing is a true, full, and correct copy of an instrument now of record in my office in book 4 of deeds, on pages 363, 364, and 365.

[SEAL.] In witness whereof, I hereunto set my hand and affix my official seal this 9th day of September, A. D. 1858.

L. C. WITTENMEYER,
County Recorder.

Endorsed: Filed March 18, 1859.

W. H. CHEVERS, *Clerk.*

Transfer from Romero to Miranda.

This indenture witnesseth, for and in consideration of two thousand dollars to me in hand paid by Manuel Miranda, of Contra county, and State of California, the receipt of which sum of money is hereby acknowledged, I hereby sell, assign, and transfer unto the said Manuel Miranda all my right, title, and interest in and to the demands

367 which I have upon the Romero rancho, by virtue of the stipulation mentioned in the deed from me to Domingo Pujol and Francisco Sanjurjo, stated on the twenty-sixth day of December, A. D. 1853; also all claims due me by virtue of any sales I may or have heretofore made of said rancho, or parts thereof, as mentioned in the said deed above referred to; and I hereby authorize him, the said Manuel Miranda, to collect and receipt for the same in same manner as I might heretofore do.

Contra Costa county, State of California, August 10th, 1856.

IGNOCENCIO ^{his} + ROMERO. [SEAL.]
mark.

In the presence of—

JOSÉ ANTONIO ROMERO.

STATE OF CALIFORNIA,

County of San Mateo, ss:

On this fourteenth day of September, A. D. one thousand eight hundred and fifty-eight, before me, B. G. Latrop, county clerk in and for said county, personally appeared José Antonio Romero, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposes and said that he resides in Santa Clara county; that he was present and saw Ignocencio Romero, known to him to
368 be the same person described in and who executed the annexed instrument as a party thereto, sign, seal, and deliver the same, and that he, the deponent, thereupon signed his name as a subscribing witness thereto.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

B. G. LATHROP,
County Clerk.

Endorsed: Filed March 18, 1859.

W. H. CHEVERS,
Clerk.

Stipulation of deeds.

In the district court of the United States for the northern district of California.

INOCENCIO ROMERO *et als.* }
vs. } No. 304 of land calendar.
THE UNITED STATES. }

It is agreed that the execution of the following deeds be admitted, to wit:

1st. A deed from Inocencio Romero and wife to Andrew Jackson Tice, dated October 9th, 1858.

369 2nd. A certified copy of a deed from Inocencio Romero and wife to Domingo Pujol and Francisco Sanjurjo, dated December 26th, 1853.

3rd. A deed from Domingo Pujol and Francisco Sanjurjo to James W. Tice, dated 14th February, 1855.

4th. A certified copy of a deed from James W. Tice to Andrew Jackson Tice, bearing date August 8th, 1855.

All of which deeds purport to convey to the respective grantees therein certain interests in the land in controversy in said cause.

5th. A transfer or assignment from Inocencio Romero to Manuel Miranda, bearing date August 10th, 1856, purporting to convey to said Miranda the benefit of certain reservations and stipulations on behalf of said Romero contained in the aforesaid, made by the said Romero and wife to the said Pujol and Sanjurjo.

The said deeds and documents being introduced only for the purpose of showing deraignment of title from the original alleged grantees to the present parties claiming interest in the cause.

Dated San Francisco, 17th March, 1859.

P. DELLA TORRE,
U. S. Att'y.

Endorsed: Filed March 18th, 1859.

W. H. CHEVERS, *Clerk.*

370 *Deed from J. Romero and wife to J. W. Jones and others.*

This indenture, made and entered into by and between José Romero and his wife, Maria Garcia de Romero, of the State of California, of the first part, and John M. Jones, William H. Mitchel, James T. Thompson, and Cornelius Yeager, parties of the second part, witnesseth: That whereas, on the 15th day of January, A. D. 1847, for a valuable consideration, and by an instrument in writing authenticated before John Burton, an alcalde in the Pueblo of San José, (and which by mistake bear date the 15th of January, 1847,) the parties of the first part sold and conveyed to one Francisco Garcia the one undivided sixth of that certain tract of land situated in the county of Contra Costa, known as the "Juntas," and lying between and bounded by the ranches of the deceased William Welch, of Juana Pacheco, of Joaquin Moraga, and of Bartolo Pacheco, the same having been a sobrante lying between and bounded by the said last-named ranches; and whereas, on the 11th day of November, A. D. 1851, in consideration of the payment of the sum of four thousand dollars, the said Francisco Garcia and his wife, Manuela Sepulveda de Garcia, by deed of that date, duly recorded in the recorder's office of said county of

Contra Costa on the 13th day of November, 1851, sold and
371 conveyed the said undivided sixth of the said land above described to the said parties of the second part, their respective heirs and assigns, whereby they, the said parties of the second part, became vested with an estate in fee simple in said undivided sixth of said tract of land: Now, therefore, in consideration of the premises, and of the sum of two hundred dollars in hand paid to the said parties of the first part, the receipt whereof is hereby acknowledged, they, the said parties of the first part, have this day given, granted, and conveyed unto the said parties of the second part, and to their and each of their

respective heirs and assigns, the said undivided one sixth of the aforesaid tract of land, with all and singular the hereditaments and appurtenances; and the estate aforesaid of the said parties of the second part, in and to the said undivided sixth of said tract of land above bounded and described, is hereby forever ratified and confirmed unto the said parties of the second part, and to their and each of their heirs and assigns forever. In witness whereof the said parties of the first part have hereunto set their hands and seals this ninth day of April, A. D. 1858.

his
JOSÉ + ROMERO. [SEAL.]
mark.

her
MARIA GARCIA + ROMERO. [SEAL.]
mark.

372 Signed, sealed, and delivered in the presence of—
D. W. MILLARD.

The words (two hundred) were interlined before signing.

A. MARSHALL,
Justice Peace.

STATE OF CALIFORNIA,
County of Alameda:

On this 9th day of April, A. D. 1858, personally appeared before me, a justice of the peace in and for the said county, José Romero and his wife, Maria Garcia de Romero, personally known to me to be the persons described in and who executed the foregoing instrument, who acknowledge to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; at the same time and place the said Maria Garcia, wife of the said José Romero, was made acquainted with the contents of said conveyance, and on an examination apart from and without the hearing of her said husband, acknowledged that she executed the same freely and voluntarily, without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

373 Given under my hand and seal on the day and year above written.

ARUNAH MARSHALL, [SEAL.]
Justice of the Peace.

STATE OF CALIFORNIA,
County of Alameda, ss:

I hereby certify that Arunah Marshall, esq., before whom the within instrument was made and executed, and who has thereunto subscribed his name, was, at the time of so doing, a justice of the peace in and for the county aforesaid, duly commissioned and sworn, and that his signature thereto is genuine. I further certify that the said acknowledgment is made and executed in accordance with the laws of the State of California.

In witness whereof, I have hereunto signed my name and affixed
[SEAL.] the seal of the county court of the county aforesaid, at San
Leandro, this fifteenth day of April, A. D. 1858.

H. M. VESEY, *Clerk.*

Recorded April 19th, 1858, in vol. 6 of deeds, pages 368 and 369,
records of Contra Costa county.

L. C. WITTENMEYER,
By M. B. HAMSON.

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Stipulation.

It is stipulated that the within document may be read in evidence
on the trial of the case of Inocencio Romero and others *vs.* the United
States in the U. S. district court for northern dist. of California, the
said document to be used only, however, for the purpose of deraigning
the title of the claimants from the original claimants.

Dated at San Francisco, 25th March, 1859.

P. DELLA TORRE, *U. S. Att'y.*

Endorsed : Filed March 25, 1859.

W. H. CHEVERS, *Clerk.*

Order submitting cause.

At a stated term of the district court of the United States of
America for the northern district of California, held at the court-
house in the city of San Francisco, on Monday, the fourth day of
April, in the year of our Lord one thousand eight hundred and fifty-
nine—

Present: Hon. M. Hall McAllister, circuit judge ; Hon. Ogden
Hoffman, district judge.

375	INOCENCIO ROMERO <i>et al.</i>	}	No. 304.
	<i>vs.</i>		
	UNITED STATES.		

On this day came as well the United States by the district attorney
as the claimants by their attorney; and it appearing to the court that
the proofs on both sides have been closed, and that the cause is ready
to be finally submitted, and the claimants by their attorney having
moved that the argument of the said cause upon the proofs be now
proceeded with, and the district attorney having suggested to the
court that he was not prepared to proceed with said argument on this
day, and would not be ready to argue the same for some days to come;
and it appearing further to the court that on two former hearings of
the said cause both parties had argued the same on the law and the
proofs, and that the proofs herewith filed are only cumulative, it is
therefore ordered, on the motion of the claimants, by their attorney,
that the said cause be, and the same is hereby, submitted to the court
on the proofs on file in said cause and upon the briefs and oral argu-
ments of counsel heretofore filed and made in said cause.

M. HALL McALLISTER, *Cir. Judge.*
OGDEN HOFFMAN, *Dist. Judge.*

376

Endorsed : Filed April 4, 1859.

W. H. CHEVERS, *Clerk.*

Decree rejecting claim.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco on Monday, the second day of May, in the year of our Lord one thousand eight hundred and fifty-nine—

Present: The Hon. M. Hall McAllister, circuit judge; the honorable Ogden Hoffman, district judge.

THE UNITED STATES	}	D. C. 304. L. C. 654.
ads.		
INOCENCIO ROMERO <i>et al.</i>		

This cause came on to be heard on appeal from the final decision of the board of land commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved on the 3rd of March, A. D. 1851, upon the transcript
 377 of the proceedings and decision of the said board of commissioners and the papers and evidence on which the said decision was founded, and upon the further testimony and evidence taken and filed in this court, and it appearing to the court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged, and decreed that the said decision be, and the same hereby is, in all things affirmed, and it is likewise ordered, adjudged, and decreed that the claim of the appellants is invalid, and that the same be, and hereby is, rejected.

M. HALL McALLISTER, *Judge, &c.*

Endorsed: Filed May 2nd, 1859.

W. H. CHEVERS, *Clerk.*

Order granting appeal.

At a stated term of the District Court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco on Monday, the second day of May, in the year of our Lord one thousand eight hundred and fifty-nine—

Present: Hon. M. H. McAllister, circuit judge; the honorable Ogden Hoffman, district judge.

378	INOCENCIO ROMERO	}	No. 304.
	vs.		
	THE UNITED STATES.		

On motion of Mr. Crocket, of counsel for claimants, it is ordered by the court that an appeal in behalf of the claimants herein to the Supreme Court of the United States be and is hereby allowed, and the said claimants are required to give bond on appeal in the sum of \$250.

Endorsed: Filed May 2nd, 1859.

W. H. CHEVERS, *Clerk.*

Appeal bond.

District court of the United States, northern district of California.

INOCENCIO ROMERO *et als.*, appellants, }
vs. } D. C. 304. L. C. 654.
 THE UNITED STATES, appellees. }

Know all men by these presents that we, Edwin A. Lawrence, Cornelius Yager, and Daniel Van Pett, of the State of California, are held and firmly bound to the above-named United States in the sum of two hundred and fifty dollars, to be paid to the said appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated the 29th day of October, A. D. 1859.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the district court of the United States for the northern district of California:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

E. A. LAWRENCE. [SEAL.]
 CORNELIUS YAGER. [SEAL.]
 DAN'L VAN PETT. [SEAL.]

Signed, sealed, and delivered in presence of—
 W. H. CHEVERS.

United States of America, northern dist. of California.

380 Daniel Van Pett, E. A. Lawrence, and C. Yager, parties to the above bond, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred (\$500) dollars over and above all his just debts and liabilities.

E. A. LAWRENCE.
 CORNELIUS YAGER.
 D. VAN PETT.

Sworn to and subscribed this 29th October, 1859, before me.
 W. H. CHEVERS,
U. S. Comm'r.

Approved.

OGDEN HOFFMAN,
Dist Judge.

Nov. 1st, 1859.

Endorsed: Filed November 1st, 1859.

W. H. CHEVERS, *Clerk.*

Order granting appeal in behalf of claimants.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco on Monday, the 11th day of November, in the year of our Lord one thousand eight hundred and sixty-one—

381 Present: The honorable Ogden Hoffman, district judge.

INOCENCIO ROMERO, appellant, }
 vs. } No. 304.
 THE UNITED STATES, appellees. }

And now, at this day, on motion of E. A. Lawrence, esq., of counsel for the claimant and appellant, made in open court, it is ordered by the court that an appeal in behalf of the claimant from the final decision of this court rendered in said cause at the December term, 1858, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

And it is further ordered by the court that the appellant serve the usual citation according to law.

Endorsed: Filed November 11, 1861.

W. H. CHEVERS, *Clerk.*

Citation on appeal.

By the Hon. Ogden Hoffman, judge of the district court of the United States for the northern district of California, to Wm. H. Sharpe, esqr., U. S. dist. att'y.:

382 Whereas Inocencio Romero and others, claimants of the rancho Las "Juntas," containing five square leagues of land, in Contra Costa county, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the district court of the United States for the northern district of the State of California, made in favor of the United States against the said Inocencio Romero and others, claimants, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the 16th day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of San Francisco, in the northern district of California, the sixteenth day of November, A. D. 1861, and of the independence of the United States the eighth-sixth.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Service of a copy of the within citation, and a copy of the appeal filed in this cause with the clerk of said court, is hereby admitted this 16th day of November, A. D. 1861.

WM. H. SHARP, *U. S. Att'y.*

Endorsed: Filed Nov'r 16th, 1861.

W. H. CHEVERS, *Clerk.*

383 I, William H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify the annexed and foregoing three hundred and eighty-two (382) consecutively numbered pages exhibit a full, true, and correct transcript of the record of proceedings before the late board of United States land commissioners, as the same is on file in my office, and of the papers, evidence, pleadings, orders, opinions, and decrees now on file in my office in the case of the United States *vs.* Inocencio Romero, No. 304.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said district court this 19th day of December, A. D. 1861, and of our independence the 86.

W. H. CHEVERS, *Clerk.*

Filed Jan. 29, 1862.

[REC. CLXXX, D. T. 1862.]—11

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Engd by R. Soper.

George Fisher,

SECRETARY TO THE CALIFORNIA LAND COMMISSION.

Engraving by R. Soper, from a portrait by J. H. Carpenter.

GEORGE FISHER,

SECRETARY AND TRANSLATOR TO THE CALIFORNIA LAND COMMISSION,

Is a native of Hungary, born in the city—called in the “Magyar” tongue Szekes-Feher-Var, and known in the German as Stuhl Weisenburg—in the month of April, 1795.

This city is about ten German miles S. W. from Buda, the ancient capital of the country, and is now the seat of justice of Feher-Var-Var-megye. Besides being the birth-place of the subject of this sketch, it has the honor to claim amongst its sons, the renowned Captain John Smith, celebrated for his single-handed conflict with three Turks, whom he slew (in the war between Turkey and Hungary), and subsequently made still more famous by the interposition of the noble Indian maiden, Pocahontas, for his salvation; and among its daughters, if public rumor be true, the devoted wife of Louis Kossuth, the Hungarian patriot.

The father of Mr. F. was a native of Bürger—“Bolgar” in the Magyar language, and died during his infancy, leaving little besides his name to his son.

After the decease of his father, he entered the college of Carlowitz, under the charge of His Excellency, Stephen Stratimirovitch, then Archbishop of the Greek church in Austria, having his Episcopal See at Carlowitz. He was here educated in the tenets of that church, which appear to have been those of his family, and according to their desire, he was to have been devoted to it, by investing him, at the proper age, with holy orders. But Providence had otherwise ordered; and in 1813, becoming wearied with the monotony of student-life, and feeling a decided repugnance to taking orders, he left the college, and joined the revolutionary ranks of Servia, under the command of George Petrovitch—the celebrated “Black George” of history.

Here, at the age of seventeen, commences his adventurous career, which, when we look upon it, forces us to exclaim,

“Truth is strange—stranger than fiction.”

The valor of George Petrovitch and his adherents was not proof, however, against the overwhelming forces of the Sultan; and after the desperate contest of Belgrade, the adventurous lad was driven with the retreating Slavonians across the Danube, and sought a refuge within the inhospitable confines of Austria.

The Austrian government, to rid itself of men whom it both hated and feared, but dared not slay, authorized the organization of the Slavonian Legion; and in it the youthful soldier was again enrolled, making with it the celebrated campaign of Italy. But a year had not elapsed, when orders came for the immediate disbanding of the Legion (then far in the interior), leaving the young adventurer again alone, his sword his only support—his courage his sole capital. With these he made his solitary way along the banks of the Danube, through a part of hostile

Turkey, to Adrianople, along the Adriatic, and after many adventures, he again crossed the Austrian frontier, between Landscrone and Mittelwalde, in Austrian and Prussian Silesia; he resolutely pushes on through Breslau, Dresden, Magdeburg, Bremen to Amsterdam. Here he determined to try if fortune might not be more propitious in the western world, and embarked on a Dutch ship bound for Philadelphia. He entered the Delaware river in the month of September, 1815, and was detained on board the ship as a redemptionist, which is the term applied to a person liable to be sold for his passage money. Again his adventurous spirit arose, and being overpowered in an attempt to regain his liberty, he was confined on board until nearly the end of the year, when growing desperate, he with two other companions took possession of the ship's boat, and landing above the city, escaped.

Their landing, nevertheless, attracted the attention of some persons on the shore, who approached them suspiciously, but soon turned back, apparently satisfied, saying to each other, "Fishers!"

It may have appeared strange to some, that the name of Fisher should be borne by one of Slavono-Servian descent, and we may as well inform the reader that it was not the patronymic of the subject of this notice. A poor orphan, escaping from the patronage of a powerful Archbishop, whose zeal for proselytism would have extended any means to have secured the deserter from the church, caused the ardent boy to use only his baptismal name; and afterward when an exile on a foreign shore, just liberating himself from a prison ship, the first word that greeted his ear was that of deliverance—viz., "Fishers," that is, they are fishermen (showing him to be unsuspected and consequently free). It was a pious and a grateful thought that prompted him to take the name (similar to that which governed the preserver of Moses), as an acknowledgment and remembrance of providential preservation.

Mr. George Fisher—for we can safely call him so now, having assumed that name with his adopted country—after struggling through those harassing trials which the stranger only knows, and the stranger with a foreign tongue most keenly feels, but which his iron will and sturdy courage soon overcame, pursued his fortunes to the great West, then, and even now, the proper sphere for spirits such as his; and after many wanderings, selected the state of Mississippi as a residence, and there having declared his intentions, became a citizen of the United States. And when we think upon his early sufferings under Austrian tyranny, we may imagine with what sincerity he threw off all allegiance to foreign potentates.

In the year 1825, impelled by love of adventure, Mr. Fisher visited the city of Mexico, where he remained until 1830, when he accompanied the Hon. J. R. Poinsett, American Minister, to New Orleans, having been engaged in procuring material for Mr. Poinsett's work on Mexico.

In this same year, after parting with Mr. P. as above, Mr. Fisher repaired to Galveston, Texas (then a Mexican port), where he received the appointment of collector of customs. This position he held until 1832, and it was during his administration of that department that the germ was placed, from which a few years later sprung the tree which is now yielding such abundant fruit to the American Republic of the North; and,

as one of the consequences of its growth and possession, producing the war which shook the golden apple of California into her lap.

When Mr. Fisher resigned his collectorship at Galveston, he proceeded to Matamoras, where he was engaged in various offices under the Mexican government—having been commissary general, collector and comptroller of customs, &c., &c.—until the autumn of 1834, when he retired to private life. But his active mind could not long lie dormant, and to employ it he became the editor and publisher of a democratic newspaper in the Spanish language, called the “*Mercurio del Puerto de Matamoras*.”

His journal appears to have been too liberal for the “powers that *were* ;” and to exemplify this we will copy from a long article published in the “*Mercurio*,” No. 24, 16th April, 1835, under the head of “*Comunicadas*,” the following significant words, addressed by Mr. Fisher, for himself and associates, to General Martin Perfecto de Cos, Commandante General of the Eastern Internal States; they are part of a reply to a communication from General Cos, in which he accuses the Mercury of diverting the attention of the supreme government (of Mexico) with “odious and noisy questions.” “In such circumstances as these,” says the Mercury, referring to the conduct of Vital Fernandez, the Governor, and Lojero, political Chief of the Department, “in which Tamaulipas is placed, being only subject to the insolence of a TYRANT, there are but *two* ways left for her to pursue. You know them both, and you see that the *worst one* against tyranny has *not* been adopted; a remonstrance has been made to government, and yet the people have not resorted to extremity.” This plainly worded article concludes with an assurance to the General that the Mercury will always, for the benefit of the people, inculcate ideas to make them *great and respectable*!

As a natural consequence Mr. Fisher was banished, and, in keeping with the magnanimous character of his persecutors, allowed but *six days* to leave.

His goods and chattels were then seized and placed at once under the hammer, and before they were even distributed an order was received by the auctioneer for the amount of sales; the net proceeds of which, when handed over, were nine hundred and sixty dollars; one thousand dollars having been expected by the judge, as appears in the official document. And what became of this sum? As shown by another official paper, it was divided among the postmaster, collector, and this greedy judge! Can we wonder that the money was required in such haste from the auctioneer!

With this taste of Mexican justice, Mr. Fisher obeys the order of banishment and sails for New Orleans. He reaches that city when the excitement for the liberation of Texas was at fever heat, and at once lends both heart and hands to the cause. He had resided ten years in Mexico, believing it a republic—had held high office under the pseudo-democracy—had collected its revenues, and controlled its accounts—placed millions of dollars in their treasury; and yet, for words which could not have been restrained by one of his noble nature, he received a peremptory order to leave the republic (?) within such a time as would hardly have been sufficient to have arranged the affairs of a cordelier, and his property was seized and sacrificed, and the proceeds divided amongst his judge and his accusers.

